

06:06:59 1 authoritative, but it can be useful.

06:07:01 2 Q. And are you aware that the
06:07:02 3 Princeton Gerrymandering Project
06:07:02 4 scored the partisan fairness of the
06:07:03 5 Oregon Congressional Plan as an F, the
06:07:09 6 worst score?

06:07:10 7 A. I was aware, but I actually
06:07:12 8 looked very closely into the
06:07:15 9 methodology they used and it was very
06:07:18 10 --- it was quite suspect, because it
06:07:19 11 relied on a very selected index of
06:07:20 12 statewide races, if I recall, and I
06:07:23 13 didn't view it as reliable. But then
06:07:25 14 the second thing is it didn't have any
06:07:26 15 indications --- it doesn't --- the
06:07:30 16 Princeton Gerrymandering Project
06:07:30 17 doesn't use any measures of
06:07:32 18 uncertainty, right. And as we've ---
06:07:33 19 or any measures of how much elections
06:07:36 20 are like to vary across time.

06:07:38 21 And so I didn't view it as
06:07:43 22 nearly as useful as Plan Score's
06:07:45 23 approach for that reason. So I didn't
06:07:48 24 view it as well on that instance.

06:07:50 25 Q. But you aware of the grade that

06:07:53 1 they gave to the Oregon Congressional
06:07:58 2 Plan.

06:07:59 3 A. That sounds right to me.

06:08:01 4 Q. Are you aware of the grade that
06:08:02 5 they gave to HB-2146 in Pennsylvania?

06:08:06 6 A. No.

06:08:07 7 Q. You indicated in your testimony
06:08:09 8 earlier that Dr. Barber didn't present
06:08:12 9 the predicted vote share for the
06:08:14 10 Democrats --- or I'm sorry, let me
06:08:14 11 restate that.

06:08:16 12 That he didn't report the
06:08:20 13 predicted Democratic vote share for
06:08:20 14 the districts in HB-2146.

06:08:20 15 Correct?

06:08:20 16 A. What He didn't project was that
06:08:26 17 --- the statewide. I didn't see it,
06:08:28 18 that's why I said that.

06:08:28 19 Q. And I think you testified that
06:08:30 20 you believed that the average
06:08:33 21 Democratic vote share statewide for
06:08:36 22 averaging 2012 to 2020 elections was
06:08:40 23 54 percent?

06:08:42 24 A. That was based on my kind of
06:08:43 25 --- you know, often trying to back out

06:08:46 1 what it was likely to be given where
06:08:49 2 he put different districts relative to
06:08:53 3 what I had predicted for those
06:09:00 4 districts.

06:09:00 5 Q. Doctor, I put on the screen
06:09:02 6 here an excerpt from Dr. Rodden's
06:09:02 7 report, another one of the experts
06:09:04 8 who's testified in the case, and he
06:09:05 9 likewise calculated the Democratic
06:09:08 10 vote share for all elections statewide
06:09:11 11 from 2012 to 2020, and he calculated
06:09:15 12 it at 52.5 percent.

06:09:15 13 Do you see that?

06:09:18 14 A. Yeah, I do. That's about what
06:09:19 15 I expected Barber's to be.

06:09:21 16 Q. So not the 54 percent you were
06:09:23 17 stating earlier?

06:09:25 18 A. Yeah, I was basing that off of
06:09:28 19 --- because he didn't provide that
06:09:29 20 information, I had to kind of read it
06:09:31 21 off of the graph. He didn't --- he
06:09:31 22 also didn't provide, you know,
06:09:31 23 numerical estimates for each of the
06:09:31 24 date. He didn't do a table of the
06:09:31 25 district shares, so I was doing it

06:09:43 1 reading it off the graph.

06:09:43 2 Q. You have all of this election
06:09:46 3 data.

06:09:47 4 Right?

06:09:47 5 A. I do somewhere.

06:09:48 6 Q. So you could calculate these
06:09:50 7 numbers just as easily as Dr. Barber
06:09:54 8 and Rodden have.

06:09:55 9 Correct?

06:09:56 10 A. Given sufficient time, yes.

06:09:59 11 Q. I'm sure everybody wished they
06:10:04 12 had more time preparing their reports
06:10:05 13 in this case.

06:10:06 14 A. Yeah, I'm sure they do.

06:10:08 15 Q. Dr. Caughey, going back to your
06:10:14 16 metrics of --- the partisan fairness
06:10:15 17 metrics of mean-median and efficiency
06:10:19 18 gap and partisan bias, none of those
06:10:21 19 directly take into account the
06:10:22 20 political geography of the state.

06:10:25 21 Correct?

06:10:26 22 A. Right. So well, what I would
06:10:26 23 say --- the way I would put it is they
06:10:28 24 are measures of the effect of the
06:10:30 25 outcome of the map, right. They don't

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06:10:35 1 say anything about why a map is
06:10:37 2 biased.

06:10:37 3 Q. And so you can have a metric,
06:10:42 4 like an efficiency gap be high or show
06:10:43 5 high bias and that could result, for
06:10:46 6 example, from the concentration of
06:10:48 7 Democratic voters in highly dense
06:10:50 8 areas.

06:10:51 9 Is that fair?

06:10:53 10 A. I would say that the
06:10:57 11 characteristics of a map are a joint
06:11:02 12 consequence of the distribution of
06:11:02 13 voters and the choices of map makers.
06:11:04 14 And so yes, that could definitely
06:11:06 15 contribute to it.

06:11:11 16 Q. And do you recognize, like many
06:11:13 17 other experts have in this case, that
06:11:14 18 in Pennsylvania there is a tilt in
06:11:16 19 favor of Republicans based upon the
06:11:18 20 concentration of Democratic voters in
06:11:21 21 certain areas of the state?

06:11:23 22 A. Yeah, so what I --- the way I
06:11:24 23 would put that is that if you draw
06:11:29 24 maps randomly, according to a certain
06:11:34 25 set of criteria involving compactness

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06:11:35 1 and so forth, you will tend to get
06:11:37 2 Republican-leaning maps. But I think
06:11:40 3 what other analysis that we've heard
06:11:42 4 of have shown is that it's not
06:11:44 5 impossible. And in fact, it's quite
06:11:47 6 possible to get --- to satisfy both
06:11:50 7 traditional geographic criteria for
06:11:51 8 districting and achieve partisan
06:11:56 9 fairness, for example.

06:11:56 10 Q. I understand, Doctor. And I
06:11:56 11 think you've answered my question, and
06:11:56 12 I'm about out of time so I want to get
06:11:57 13 my last question out, which is did you
06:11:58 14 do any calculations or analysis to
06:12:01 15 determine how much of the bias that
06:12:04 16 you are calculating in HB-2146 is due
06:12:07 17 to the political geography of the
06:12:09 18 state?

06:12:09 19 A. I did not.

06:12:11 20 ATTORNEY TUCKER:
06:12:11 21 Thank you. No further
06:12:12 22 questions.

06:12:12 23 JUDGE McCULLOUGH:
06:12:13 24 Thank you, Counsel.
06:12:14 25 Now, we will move to the

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Congressional Intervenor
s Counsel.

CROSS EXAMINATION

BY ATTORNEY VANCE:

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Q. Thank you, Doctor. Thank
you for being here under the
circumstances. Shohin Vance, and I
represent Congressman Reschenthaler as
well as a group of other Intervenor.

So let me ask you first, you
haven't reviewed every map that has
been submitted in this case.

Right?

A. As I said, I am actually not
even sure what is the complete list of
the maps that have been submitted are.
But a lot of maps, yes. All the maps
that I was able to review --- I
received in time to actually review
are in my report, and that includes
---.

Q. And your review ---?

A. Go ahead.

06:13:18 1 Q. And your reviews is based ---
06:13:18 2 and your assessment centers entirely
06:13:24 3 on the partisan fairness.

06:13:25 4 Is that correct?

06:13:26 5 A. That's right. I was asked to
06:13:28 6 assess the partisan fairness of the
06:13:31 7 maps and that's what I did.

06:13:31 8 Q. Okay.

06:13:31 9 So based on that metrics, what
06:13:33 10 do you think the best map is?

06:13:37 11 A. Of the ones that I reviewed?

06:13:39 12 Q. Yeah.

06:13:39 13 A. I would actually say that there
06:13:46 14 are sort of three tiers of maps. I
06:13:49 15 would say in terms of partisan, the
06:13:51 16 ones with the least bias are the two
06:13:56 17 Democrats maps. The current --- I'm
06:13:57 18 sorry, the Governor's map is sort of
06:13:59 19 in the middle, and the Republican ---
06:14:07 20 the House Republican map and the
06:14:07 21 Reschenthaler map are --- have the --
06:14:11 22 are the --- have the highest partisan
06:14:15 23 bias. In all the maps, the partisan
06:14:16 24 bias favors Republican, but it's the
06:14:18 25 most extreme. And then I ---.

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06:14:18 1 Q. And to clarify --- I'm sorry.

06:14:20 2 But to clarify, when you say the

06:14:20 3 Reschenthaler map, you just mean

06:14:22 4 Reschenthaler 2.

06:14:23 5 Correct?

06:14:25 6 A. As I understand it, it's

06:14:26 7 Reschenthaler 2.

06:14:27 8 Q. Okay.

06:14:28 9 And to clarify, you did not

06:14:29 10 review Reschenthaler 1?

06:14:34 11 A. I don't believe so. I received

06:14:36 12 a file called Reschenthaler 2, and

06:14:37 13 that is what I reviewed.

06:14:46 14 Q. Okay.

06:14:46 15 So in using a Plan Score, you

06:14:48 16 sort of describe it as being in line

06:14:53 17 with standard political science

06:14:59 18 practices. And you say the account was

06:15:01 19 based on the 2020 Presidential vote

06:15:03 20 and accounts for incumbency status and

06:15:06 21 state and election-specific factors,

06:15:11 22 How does it account for those?

06:15:14 23 A. So you're talking about how

06:15:15 24 does it account for specifically the

06:15:19 25 election and state-specific factors?

06:15:19 1 Q. Right.

06:15:20 2 A. So it has what is called ---
06:15:23 3 it's what is called a multilevel
06:15:28 4 model where if you have a --- like, in
06:15:31 5 a typical progression model you have a
06:15:33 6 a coefficient associated with every
06:15:33 7 variable, right, so the coefficient
06:15:43 8 associated with a presidential vote
06:15:43 9 describes the relationship between
06:15:43 10 presidential vote and congressional
06:15:44 11 vote.

06:15:44 12 In a simple progression model
06:15:47 13 model, you would just have one
06:15:48 14 coefficient to describe that
06:15:48 15 relationship across all states and all
06:15:54 16 time. But in a multilevel model you
06:15:56 17 allow that relationship to vary across
06:15:59 18 states and across time.

06:16:00 19 Q. I'm sorry, I just want to
06:16:03 20 understand, specifically for
06:16:03 21 Pennsylvania for the maps you
06:16:08 22 assessed, how does it account for it?
06:16:09 23 I mean you're saying over time. And I
06:16:10 24 understand the theoretical --- how
06:16:10 25 does it do it here?

06:16:14 1 A. So it basically --- it
06:16:14 2 estimates it as sort of a
06:16:16 3 Pennsylvania-specific relationship
06:16:19 4 that also --- that is informed by the
06:16:21 5 global relationship, but it takes into
06:16:24 6 account what that specific factor ---
06:16:26 7 you know, what's unique about
06:16:29 8 Pennsylvania, the relationship in
06:16:30 9 Pennsylvania. It also ---.

06:16:30 10 Q. Takes into account how?

06:16:38 11 A. It just uses essentially --- it
06:16:40 12 uses data --- is uses what the
06:16:42 13 relationship is in Pennsylvania
06:16:44 14 empirically, between a Presidential
06:16:48 15 vote and congressional vote.

06:16:49 16 Q. So it's the Plan Score that
06:16:50 17 came up with this, not you? You don't
06:16:52 18 --- you didn't use the data and the
06:16:53 19 relationship? You don't know what
06:16:54 20 the relationship is, it's a formula
06:16:57 21 that Plan Score generated or based on
06:17:00 22 a formula that Plan Score ---?

06:17:01 23 A. Yeah.

06:17:01 24 Q. Okay.

06:17:03 25 A. It's a result of a model. I

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06:17:06 1 mean, Plan Score did not come up with
06:17:07 2 a number, it estimated a model, which,
06:17:09 3 you know, according to a certain
06:17:13 4 functional form which it --- which it
06:17:16 5 reports and which I have, that such
06:17:17 6 that the --- yeah, so --- yeah, I sort
06:17:23 7 of lost track of the question.

06:17:25 8 Q. That's okay.

06:17:25 9 I will sort of try to narrow
06:17:29 10 that a little bit.

06:17:29 11 A. What's that?

06:17:29 12 Q. I'll try to narrow it.

06:17:29 13 JUDGE McCULLOUGH:

06:17:30 14 You are both talking.

06:17:30 15 BY ATTORNEY VANCE:

06:17:33 16 Q. Sorry. I'll try to narrow that
06:17:33 17 a little bit to help you out.

06:17:35 18 So state specific, does it
06:17:37 19 account, for example, for changes in
06:17:41 20 voting procedure such as straight
06:17:43 21 party ticket voting or not?

06:17:44 22 A. So it does --- by changes you
06:17:44 23 mean with a given state? Like the
06:17:44 24 party ---?

06:17:44 25 Q. I mean when a states changes

06:17:52 1 its laws?

06:17:53 2 A. I see. So it is --- it is not
06:17:57 3 taking anything explicitly into
06:18:00 4 account, like it's not taking that
06:18:03 5 explicitly into account, but if that
06:18:06 6 affects what the relationship between
06:18:07 7 Presidential vote and Congressional
06:18:10 8 vote is in that state, the model will
06:18:10 9 pick up on that, like if that makes it
06:18:11 10 more distinctive.

06:18:11 11 Q. Right, eventually. Right? But
06:18:14 12 not immediately --

06:18:15 13 A. Yeah. You know, it's not going
06:18:18 14 to --- mean, it's not a perfect
06:18:26 15 oracle. It doesn't know things for
06:18:27 16 sure.

06:18:28 17 Q. You also rely on Plan Score's
06:18:29 18 historic library. But You haven't
06:18:29 19 actually looked at Plan Score's entire
06:18:32 20 library, have you? You don't know
06:18:32 21 what it is?

06:18:33 22 A. Have I scrolled through every
06:18:35 23 plan, no.

06:18:35 24 Q. Okay.

06:18:36 25 And you don't know how

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06:18:37 1 accurately it reflects what, you know,
06:18:39 2 the typical plan would look like,
06:18:41 3 whether it's skewed one way or the
06:18:44 4 other?

06:18:45 5 A. Well, the library is --- as I
06:18:46 6 understand it the library is
06:18:51 7 comprehensive since the 1970s.

06:18:53 8 Q. Okay.

06:18:55 9 A. For every --- go ahead.

06:18:55 10 Q. And one of the reasons why you
06:18:57 11 rely on Plan Score and have such
06:19:00 12 confidence in it, as I understand it
06:19:03 13 from the report, is that it is, as you
06:19:04 14 said it, non-partisan.

06:19:05 15 Is that correct? I would say
06:19:08 16 the reason I have confidence in it is
06:19:10 17 not because it has --- it is
06:19:12 18 non-partisan. I mean, I guess that is
06:19:14 19 helpful. But the main reason I have
06:19:15 20 confidence in it is it's very
06:19:16 21 transparent about the the data methods
06:19:16 22 it uses and I believe them to be
06:19:21 23 rigorous.

06:19:21 24 Q. Okay.

06:19:21 25 And by non-partisan you don't

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06:19:23 1 mean that they don't necessarily
06:19:29 2 advocate for certain policies, right?
06:19:31 3 You just mean they're not associated
06:19:33 4 with a particular party?
06:19:35 5 A. That's right. Yeah.
06:19:36 6 Q. You say that declination is a
06:19:39 7 relatively recent development.
06:19:42 8 Is that correct?
06:19:43 9 A. Yeah. That's right.
06:19:45 10 Q. So it doesn't have an
06:19:47 11 established history of being used, nor
06:19:51 12 is there much data to reflect how
06:19:54 13 accurately it predicts future
06:20:01 14 outcomes, is there?
06:20:01 15 A. So --- I don't know what you
06:20:01 16 mean by future outcomes because
06:20:01 17 there's no data on future outcomes yet
06:20:05 18 for any of these metrics. But the ---
06:20:06 19 it has been retrospectively applied to
06:20:09 20 many past elections, in fact, just as
06:20:13 21 many as the other measures. But you
06:20:13 22 are right that it has been --- it was
06:20:15 23 developed about five --- I think five
06:20:19 24 years ago, and it has come into fairly
06:20:25 25 frequency use since then. But it has

06:20:26 1 not --- it has not been used as long
06:20:29 2 as most of the other metrics have.

06:20:31 3 Q. Okay.

06:20:36 4 And your model and the
06:20:41 5 simulation, I guess that you ran or
06:20:42 6 the model is based on no incumbency.

06:20:47 7 Is that correct?

06:20:48 8 A. Right. So the model itself is
06:20:49 9 estimated with knowing whether someone
06:20:52 10 is an incumbent or not, you know, when
06:20:55 11 you're estimating the model. But when
06:20:56 12 you're projecting forward, you know,
06:20:57 13 you're saying, okay, we have to have a
06:20:58 14 particular scenario. What's the
06:21:01 15 scenario? It's going to be --- it
06:21:03 16 makes more sense to think about
06:21:05 17 open-seat scenarios.

06:21:06 18 Q. Based on your experience as a
06:21:07 19 professor of political science, with a
06:21:12 20 state that has anywhere between, let's
06:21:14 21 say, 15 and 18 congressmen, how often
06:21:19 22 is it that there is an election with
06:21:22 23 not a single incumbent?

06:21:26 24 A. Oh I'm sure that's very rare.
06:21:29 25 So this would be a case where ---.

06:21:31 1 Q. Has it ever happened in

06:21:35 2 Pennsylvania in the 15 years?

06:21:39 3 A. I don't know, but it's not

06:21:43 4 meant to estimate what --- if you have

06:21:44 5 a particular scenario you were

06:21:44 6 interested in, saying like stipulating

06:21:49 7 that this person is going to run for

06:21:52 8 the election or not, you can put that

06:21:53 9 in. But it seems like a --- you know,

06:21:53 10 if you want to think about a map as a

06:21:58 11 neutral playing field, you want to

06:21:58 12 evaluate it as a neutral playing field

06:22:00 13 it seems like the fairest way to do

06:22:02 14 that is not to presume that one party

06:22:05 15 has an advantage systematically over

06:22:12 16 the other in terms of incumbents.

06:22:18 17 ATTORNEY VANCE:

06:22:19 18 I have no further

06:22:19 19 questions.

06:22:20 20 JUDGE McCULLOUGH:

06:22:20 21 Thank you, Counsel. And

06:22:22 22 now Counsel for the House Democratic

06:22:27 23 Intervenor.

06:22:27 24 ATTORNEY SENOFF:

06:22:27 25 Your Honor, we have no

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06:22:28 1 questions for this witness. Thank
06:22:30 2 you.

06:22:30 3 JUDGE McCULLOUGH:

06:22:30 4 Oh, you're relinquishing
06:22:33 5 your time again. Okay. All right.
06:22:33 6 Thank you.

06:22:34 7 So now we'll.

06:22:35 8 Back to Counsel for
06:22:42 9 Senate Democratic Intervenors for
06:22:42 10 Redirect.

06:22:42 11 ---

06:22:42 12 REDIRECT EXAMINATION

06:22:58 13 ---

06:22:58 14 BY ATTORNEY ATTISANO:

06:22:59 15 Q. Dr. Warshaw --- excuse me,
06:22:59 16 sorry.

06:23:04 17 Doctor Caughey. I was thinking
06:23:04 18 of Dr. Warshaw.

06:23:06 19 You compared the actual
06:23:08 20 outcomes with the 2018 Congressional
06:23:12 21 Map to the Plan Score analysis of the
06:23:14 22 2018 map essentially to get a baseline
06:23:18 23 of reliability?

06:23:19 24 Correct?

06:23:20 25 A. Correct.

06:23:22 1 Q. All right.

06:23:25 2 Now, are you aware if any other
06:23:27 3 experts in this case took their
06:23:28 4 methodology and compared it to the
06:23:31 5 2018 Congressional Map to determine
06:23:34 6 how reliable their methodology was
06:23:38 7 when dealing with real world outcomes
06:23:41 8 related to the 2018 map?

06:23:45 9 A. I am not aware.

06:23:50 10 Q. And with respect to the
06:23:54 11 election data that Plan Score uses,
06:23:59 12 can you please just explain if they
06:24:02 13 use a set of data that simply reflects
06:24:08 14 previous election results or if they
06:24:11 15 use variations in combination with
06:24:16 16 that data and if so why that matters?

06:24:24 17 A. So what --- Plan Score doesn't
06:24:26 18 just give simply average or project
06:24:31 19 formal elections from the past. What
06:24:33 20 it's trying to do --- what it uses is
06:24:36 21 a model, it uses information from past
06:24:40 22 elections such as from past
06:24:42 23 Presidential elections to predict how
06:24:49 24 a Democratic or Republican district
06:24:55 25 will be in future Presidential

06:24:59 1 elections and it uses past
06:24:59 2 Presidential --- past Congressional
06:25:00 3 election results and the variation in
06:25:00 4 those results across multiple cycles,
06:25:05 5 2012, 2014, 2016, 2018, 2020 to come
06:25:12 6 up with a reasonable baseline for the
06:25:20 7 uncertainty of projections going
06:25:24 8 forward.

06:25:24 9 So it's a combination of past
06:25:24 10 results, and a model that relates
06:25:24 11 those to what we already know about
06:25:24 12 Congressional elections and how they
06:25:25 13 vary.

06:25:25 14 Q. And if anybody wanted to
06:25:27 15 challenge the actual reliability of
06:25:29 16 Plan Score's predictions, they could
06:25:31 17 simply plug a map in from a previous
06:25:36 18 election and test it against what is
06:25:38 19 actually happened in the real world.

06:25:40 20 Correct?

06:25:42 21 A. That's right.

06:25:43 22 Q. And all the experts in this
06:25:48 23 case, to the best of your knowledge,
06:25:50 24 know how to do that and have the
06:25:50 25 ability if they so cared to do so.

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06:25:54 1 Correct?

06:25:55 2 A. Yes.

06:25:57 3 ATTORNEY ATTISANO:

06:25:57 4 Thank you. No further
06:25:58 5 questions.

06:25:58 6 JUDGE McCULLOUGH:

06:25:59 7 All right. Thank you.

06:25:59 8 And thank you, Dr.

06:26:01 9 Caughey, for making yourself

06:26:02 10 available. We wish you and your

06:26:04 11 family well.

06:26:05 12 Thank you.

06:26:05 13 THE WITNESS:

06:26:06 14 Thank you very much.

06:26:10 15 JUDGE McCULLOUGH:

06:26:11 16 Okay.

06:26:11 17 Right now we will take a
06:26:12 18 recess and then reconvene for closing
06:26:15 19 arguments and that should be
06:26:18 20 everything that we need to take care
06:26:20 21 of.

06:26:20 22 We have some --- the

06:26:22 23 Court will note some other matters.

06:26:26 24 Did you have a question,
06:26:28 25 Mr. Wiygul?

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ATTORNEY WIYGUL:

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Sorry, Your Honor. Just

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with regard to one of those other

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matters, which, at least from my

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perspective, concerns potential

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witness testimony, I just wanted to

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clarify whether we wanted to resolve

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that prior to the --- officially

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closing the evidence and moving into

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closing arguments?

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JUDGE McCULLOUGH:

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Are you are talking

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about the affidavit?

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ATTORNEY WIYGUL:

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Correct. Yes.

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JUDGE McCULLOUGH:

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Well, I thought we were

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going to deal with that during the

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closing arguments. That would be

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submitted as part of your closing

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argument as a --- what was requested

06:26:59

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was a schedule, a proposed --- the

06:27:02

23

current schedule, and you had offered

06:27:05

24

--- I guess, somebody wanted to do

06:27:09

25

this on your behalf to submit a

06:27:10 1 schedule of what would have to be
06:27:12 2 changed by the secretary, or what
06:27:18 3 should be changed for them to have the
06:27:19 4 election done in light of the current
06:27:21 5 timeframe.

06:27:22 6 ATTORNEY WIYGUL:

06:27:23 7 I understand. From our
06:27:25 8 prospective, we would like to present
06:27:27 9 witness testimony --- we being the
06:27:29 10 Department of State on the topic,
06:27:31 11 which I had understood was one of the
06:27:32 12 topics to be discussed in this hearing
06:27:35 13 on potential changes to the election
06:27:39 14 calendar.

06:27:40 15 And I understand from
06:27:41 16 our colloquy off the record that the
06:27:43 17 Court may have a different view as to
06:27:46 18 the proper scope of that testimony.

06:27:47 19 JUDGE McCULLOUGH:

06:27:48 20 Well, I think Counsel
06:27:48 21 has an objection of --- different
06:27:51 22 Counsel has different objections.

06:27:52 23 ATTORNEY WIYGUL:

06:27:52 24 Yes.

06:27:53 25 JUDGE McCULLOUGH:

06:27:53 1 So if you want to ---
06:27:54 2 did you provide everyone with a copy
06:27:56 3 all counsel have a copy?

06:27:57 4 ATTORNEY WIYGUL:

06:27:58 5 I did prior to our
06:28:00 6 conference, Your Honor.

06:28:01 7 JUDGE McCULLOUGH:

06:28:01 8 And are you moving that
06:28:02 9 into evidence?

06:28:03 10 ATTORNEY WIYGUL:

06:28:04 11 Yes, Your Honor.

06:28:04 12 JUDGE McCULLOUGH:

06:28:04 13 So any Counsel have
06:28:05 14 objection to moving into evidence the
06:28:10 15 --- could you identify it, Mr. Wiygul?

06:28:14 16 ATTORNEY WIYGUL:

06:28:14 17 Yes, Your Honor. I
06:28:14 18 haven't marked it and I would like to
06:28:14 19 however is the best way to do that,
06:28:16 20 but I will identify it for the record,
06:28:17 21 this is an affidavit by Jonathan
06:28:21 22 Marks, who is the deputy secretary for
06:28:23 23 elections and commissions for the
06:28:25 24 Commonwealth's Department of State,
06:28:29 25 and I don't know what exhibit number

06:28:33 1 this should be.

06:28:33 2 JUDGE McCULLOUGH:

06:28:34 3 So if any Counsel has
06:28:35 4 any objection, would you please state
06:28:36 5 it for the record now.

06:28:38 6 ATTORNEY TUCKER:

06:28:39 7 Yes, Your Honor. Robert
06:28:41 8 Tucker on behalf of the Republican
06:28:44 9 House Intervenors.

06:28:44 10 We don't object to
06:28:45 11 admitting the document but we would
06:28:47 12 object to the inclusion of
06:28:48 13 paragraphs 18 to 26, as though
06:28:51 14 paragraphs relate to deadlines related
06:28:55 15 to the legislative redistricting
06:28:55 16 process, not the congressional
06:28:59 17 redistricting process and they are not
06:29:00 18 relevant to these proceedings, and
06:29:01 19 they frankly don't need to be in
06:29:02 20 there.

06:29:03 21 Thank you.

06:29:15 22 JUDGE McCULLOUGH:

06:29:16 23 Were there other
06:29:18 24 Counsel? I thought that had an
06:29:20 25 objection.

06:29:20 1 Okay.

06:29:20 2 You said paragraphs 18

06:29:22 3 through 26.

06:29:23 4 Correct?

06:29:24 5 ATTORNEY TUCKER:

06:29:24 6 That's correct, Your

06:29:32 7 Honor.

06:29:32 8 JUDGE McCULLOUGH:

06:29:32 9 So I note for the

06:29:33 10 record, as paragraphs 18 through 26 as

06:29:33 11 noted in paragraph 20 of the affidavit

06:29:40 12 reference litigation that is currently

06:29:41 13 pending in this Court and is not

06:29:43 14 before this particular Court at this

06:29:45 15 time, this Judge in this trial, so the

06:29:49 16 Court would not include those

06:29:51 17 paragraphs simply because there's

06:29:53 18 pending litigation and cannot address

06:29:57 19 the issues, which will be addressed in

06:29:59 20 that case which you cite as David, et

06:30:03 21 al. versus Chapman at Number 22 MD

06:30:06 22 2022.

06:30:07 23 ATTORNEY WIYGUL:

06:30:08 24 Thank you, Your Honor.

06:30:08 25 And I understand the

06:30:09 1 Court's ruling. I'd just like to note
06:30:12 2 for the record, I understand the Court
06:30:14 3 is sustaining the grounds other than
06:30:15 4 hearsay. To the extent there was a
06:30:17 5 hearsay objection, I just want to note
06:30:19 6 that we have Jonathan Marks here and
06:30:23 7 he's prepared to testify.

06:30:23 8 JUDGE McCULLOUGH;

06:30:23 9 I didn't hear him say a
06:30:24 10 hearsay objection on the record.

06:30:25 11 ATTORNEY TUCKER:

06:30:26 12 We're not objecting on
06:30:27 13 hearsay. It's on relevance grounds.

06:30:29 14 JUDGE McCULLOUGH:

06:30:30 15 It's on relevance and
06:30:33 16 the fact that there is pending
06:30:34 17 litigation.

06:30:35 18 ATTORNEY TUCKER:

06:30:35 19 Correct, Your Honor.

06:30:37 20 ATTORNEY WIYGUL:

06:30:37 21 And I understand that
06:30:38 22 the Court is sustaining.

06:30:39 23 JUDGE McCULLOUGH:

06:30:40 24 I'm sustaining on the
06:30:41 25 relevance and the fact that

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06:30:43 1 paragraph 20 of your affidavit clearly
06:30:45 2 states pending litigation,
06:30:50 3 paragraph 18 through 26 not in front
06:30:52 4 of this Court at this time. So it
06:30:54 5 would be inappropriate for this Court,
06:30:56 6 one, to hear anything on that, and
06:30:58 7 two, on the relevance that matter is
06:31:00 8 not in particular before us.

06:31:02 9 ATTORNEY WIYGUL:

06:31:03 10 And I understand the
06:31:03 11 Court's ruling. Thank you.

06:31:04 12 And I understand that
06:31:06 13 the affidavit has been marked for the
06:31:07 14 record.

06:31:07 15 JUDGE McCULLOUGH:

06:31:08 16 And it's so admitted
06:31:09 17 with those exceptions.

06:31:12 18 ATTORNEY WIYGUL:

06:31:13 19 Thank you, Your Honor.

06:31:13 20 JUDGE McCULLOUGH:

06:31:14 21 Thank you very much for
06:31:14 22 providing it, Counsel.

06:31:14 23 Okay.

06:31:18 24 Anything else? I don't
06:31:19 25 want to assume that we don't have

06:31:22 1 anything else for right now. So we
06:31:24 2 will reconvene at 4:15. And that
06:31:30 3 gives you all a little bit of a
06:31:32 4 comfort break, and then we will do
06:31:39 5 closing arguments.

06:31:47 6 COURT CRIER HOLLAND:

06:31:47 7 The Court is now in
06:32:25 8 recess.

06:32:25 9 ---

06:32:25 10 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

07:02:21 11 ---

07:02:21 12 COURT CRIER HOLLAND:

07:05:10 13 All rise. Commonwealth
07:05:12 14 Court is back in session.

07:05:12 15 JUDGE McCULLOUGH:

07:05:13 16 The much awaited moment,
07:05:14 17 right, closing arguments and wrapping
07:05:21 18 up this very expedited process. So we
07:05:25 19 will begin but this time in reverse
07:05:30 20 order as we discussed at the pretrial
07:05:36 21 conference. Are you ready? No?
07:05:53 22 Okay.

07:05:53 23 JUDGE McCULLOUGH:

07:05:53 24 Are you, Mr. Attisano?

07:05:59 25 ATTORNEY ATTISANO:

07:05:59 1 Yes, Your Honor.

07:06:00 2 JUDGE McCULLOUGH:

07:06:00 3 Okay. Proceed.

07:06:07 4 ATTORNEY ATTISANO:

07:06:21 5 Other counsel and may it

07:06:22 6 please the Court, Your Honor, first

07:06:26 7 I'd like to address the election

07:06:29 8 calendar issue. And I would like the

07:06:32 9 Court to know that it's the position

07:06:33 10 of the Senate Democratic Caucus that

07:06:37 11 the 2022 primary election schedule

07:06:40 12 required by Pennsylvania law,

07:06:41 13 including the primary election itself

07:06:43 14 scheduled for May 17th, 2022, is

07:06:47 15 essentially unworkable at this point

07:06:49 16 in time.

07:06:50 17 It will disenfranchise

07:06:52 18 millions of Pennsylvania voters and

07:06:55 19 severely prejudice candidates running

07:06:56 20 for public office if it's not modified

07:06:59 21 by the Pennsylvania Supreme Court.

07:07:02 22 And as the Legislative Reapportionment

07:07:05 23 Commission has not yet approved the

07:07:06 24 final plan, the period for review of

07:07:08 25 the plan by the Pennsylvania Supreme

07:07:11 1 Court has not yet commenced. And
07:07:13 2 these facts together with this ongoing
07:07:15 3 litigation involving the congressional
07:07:18 4 map and today's decision IN McLinko
07:07:21 5 versus Commonwealth of Pennsylvania
07:07:23 6 involving mail-in voting compelled the
07:07:24 7 conclusion that the primary election
07:07:27 8 must be postponed and pre-primary
07:07:30 9 deadlines should be adjusted by the
07:07:33 10 Pennsylvania Supreme Court. And
07:07:33 11 that's the position from the Senate
07:07:37 12 Democratic Caucus with regard to the
07:07:39 13 election calendar.

07:07:39 14 JUDGE McCULLOUGH:

07:07:40 15 Thank you.

07:07:40 16 ATTORNEY ATTISANO:

07:07:41 17 And moving on, Your
07:07:42 18 Honor, to addressing which map this
07:07:45 19 Court should choose in this
07:07:47 20 litigation, I'd first like to start by
07:07:49 21 just reiterating something I talked
07:07:51 22 about briefly in my opening, Your
07:07:55 23 Honor, and that was that with respect
07:07:58 24 to choosing HB-2146, the House put
07:08:02 25 forward by the rep --- excuse me, the

07:08:08 1 plan put forward by the Republican
07:08:10 2 legislative leaders, if this Court
07:08:11 3 were to pick that map, this Court
07:08:14 4 would be doing much more than simply
07:08:16 5 picking the map.

07:08:17 6 It would be shifting the
07:08:20 7 balance of powers between the
07:08:22 8 legislative branch and the executive
07:08:24 9 branch with respect to redistricting.
07:08:27 10 It would create incentive in the
07:08:28 11 future for whichever party is in the
07:08:30 12 majority in the legislative branch
07:08:32 13 whenever there is a member of the
07:08:33 14 opposing party in the Governor's
07:08:36 15 office to not move forward in a way
07:08:40 16 that passes legislation that the
07:08:49 17 Governor could sign into law because
07:08:49 18 they would know --- whichever party
07:08:49 19 was in that majority would know that
07:08:50 20 they could go to the judicial branch
07:08:52 21 and receive special deference or
07:08:54 22 special consideration as the
07:08:57 23 Republican legislators have requested
07:09:04 24 in this case with the plan.
07:09:04 25 And so by doing that and selecting

07:09:05 1 that map, this Court would be shifting
07:09:07 2 the balance of powers among the
07:09:09 3 legislative branch and executive
07:09:09 4 branch with respect to redistricting
07:09:12 5 and creating a disincentive for more
07:09:16 6 redistricting cases to end up in an
07:09:19 7 impasse and have to be resolved with
07:09:23 8 judicial litigation rather than being
07:09:25 9 resolved by the political branches.

07:09:28 10 And I will just say as
07:09:29 11 well that I would like to remind the
07:09:32 12 Court of something the Court is
07:09:34 13 already aware of, is that the only
07:09:36 14 elected official in this litigation,
07:09:38 15 in this process, that has received a
07:09:41 16 majority of votes from Pennsylvania is
07:09:45 17 Governor Wolf. And so when the
07:09:51 18 Republican legislative leaders argue
07:09:51 19 that their plan has the support of the
07:09:57 20 people in some sense, I'd like to
07:09:57 21 remind the Court of the fact about
07:09:58 22 that Governor Wolf is the only elected
07:10:02 23 official involved in this that that
07:10:04 24 has received a majority of votes of
07:10:06 25 Pennsylvanians.

07:10:07 1 And additionally, Your Honor,
07:10:09 2 the HB-2146 has failed the Democratic
07:10:11 3 process. And so that brings me to
07:10:14 4 which map this Court should select in
07:10:17 5 litigation. And some of the experts
07:10:20 6 talked about tiers of maps and
07:10:23 7 clustered maps together and we heard a
07:10:27 8 lot about the six traditional
07:10:27 9 redistricting factors. And in the
07:10:31 10 League of Women Voters case our
07:10:31 11 Supreme Court said something that I
07:10:33 12 think was very, very wise and forward
07:10:36 13 looking.

07:10:36 14 They acknowledge the
07:10:37 15 fact that due to the mathematical
07:10:43 16 capability we have, it's very possible
07:10:45 17 and even likely that somebody could
07:10:48 18 draw a map that on its face meets the
07:10:52 19 six traditional redistricting
07:10:54 20 principles that have been discussed at
07:10:56 21 length here these last two days. And
07:10:58 22 so in that instance, the Court should
07:11:01 23 be considering the partisan fairness
07:11:02 24 of the map and it should go beyond
07:11:06 25 that facial criteria and look

07:11:08 1 underneath to see if that map in the
07:11:11 2 partisan fairness is violating the
07:11:16 3 Elections Clause of the Pennsylvania
07:11:19 4 Constitution.
07:11:19 5 And you heard at length from multiple
07:11:21 6 experts. And the expert that Senate
07:11:25 7 Democratic Caucus put on focused
07:11:28 8 specifically on that question of
07:11:29 9 partisan fairness. And he was able to
07:11:31 10 explain to this Court about symmetry
07:11:34 11 and the win bonus. And I hope it all
07:11:39 12 came through with him being on video.
07:11:41 13 And I know it's been a lot of
07:11:43 14 information coming at everyone the
07:11:45 15 last couple days, but the biggest
07:11:47 16 takeaway from our expert witness, Your
07:11:52 17 Honor, I submit is that he talks about
07:11:53 18 symmetry, meaning that if the win
07:11:57 19 bonus occurs at a certain percentage
07:11:59 20 for party A, then it should also occur
07:12:03 21 for a certain percentage for party B.
07:12:06 22 And that indicates partisan fairness.
07:12:08 23 And that's what I was trying to flesh
07:12:10 24 out with him with respect to the
07:12:12 25 graph, is the visual representation of

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07:12:14 1 that. And so we just ask the Court to
07:12:16 2 really focus on that metric and their
07:12:20 3 analysis.

07:12:20 4 And as the Court
07:12:21 5 recalls, it was the HB-2146 and the
07:12:26 6 plan from Map Number 2 from
07:12:29 7 Reschenthaler which scored the worst
07:12:31 8 on the partisan fairness index as
07:12:34 9 reported by our expert.

07:12:36 10 And it was Senate
07:12:38 11 Democratic Caucus Plan 1 and Plan 2
07:12:42 12 that scored the highest on that. And
07:12:45 13 so I'm really asking the Court today
07:12:47 14 to look at those initial six
07:12:51 15 redistricting principles and go on and
07:12:54 16 see what's underneath them. Because
07:12:56 17 the vast majority of the maps on their
07:12:59 18 face do appear to meet those
07:13:00 19 principles. But when it comes to
07:13:03 20 what's happening underneath with
07:13:04 21 respect to partisan fairness, there is
07:13:06 22 a wide range that's happening. And
07:13:10 23 Your Honor, that is the factor that we
07:13:14 24 would ask the Court to look to in
07:13:17 25 making a final decision.

07:13:19 1 And I thank you for your
07:13:20 2 time today. Thank you for proceeding.
07:13:22 3 We know it couldn't --- we know it's
07:13:25 4 an unenviable task that's happening
07:13:29 5 here today, and thank you again for
07:13:31 6 permitting our expert to testify by
07:13:32 7 video.

07:13:32 8 JUDGE McCULLOUGH:

07:13:32 9 Thank you, Counsel, Mr.
07:13:35 10 Attisano. Now, Mr. Senoff for House
07:13:44 11 Democratic Intervenors.

07:13:46 12 ATTORNEY SENOFF:

07:13:52 13 Good afternoon. Your
07:13:53 14 Honor, may it please the Court, David
07:13:55 15 Senoff for Intervenors, the House
07:14:01 16 Democratic Caucus. Your Honor, this
07:14:02 17 case is something.

07:14:05 18 As you quite correctly
07:14:07 19 pointed out when you took the bench,
07:14:09 20 this is not exactly like League of
07:14:13 21 Women Voters, not exactly like the
07:14:14 22 Mellow case. Nobody is asking that
07:14:19 23 any currently enforced map be ruled
07:14:22 24 unconstitutional because we know that
07:14:26 25 the map that we currently have is

07:14:28 1 obsolete given the results of the
07:14:30 2 census.

07:14:31 3 So instead, what we've been
07:14:32 4 doing over the last two days is we
07:14:34 5 focused on the technical details of
07:14:36 6 redistricting, the minute differences
07:14:43 7 between these maps, and the --- using
07:14:46 8 in some cases the minute technical
07:14:50 9 differences to obscure the larger
07:14:52 10 point in this case. And what you're
07:14:54 11 --- what we saw over two days and what
07:14:57 12 you're being asked to decide is not
07:15:00 13 really a beauty contest between maps.
07:15:03 14 We've used that term shorthandly, but
07:15:08 15 when --- but the question, in all
07:15:11 16 seriousness, is whether Pennsylvania's
07:15:17 17 elections will be fair and allow every
07:15:18 18 voter to have an equal opportunity to
07:15:18 19 elect their chosen candidate, win or
07:15:18 20 lose.

07:15:24 21 The Republican Intervenors
07:15:26 22 have noted that the United States and
07:15:28 23 Pennsylvania Constitutions --- I'm
07:15:32 24 sorry, the United States and
07:15:34 25 Pennsylvania Constitutions permit

07:15:37 1 Congressional redistricting to be a,
07:15:42 2 quote, fundamentally legislative task
07:15:44 3 and their proposals should, therefore,
07:15:46 4 somehow be given some deference. Of
07:15:47 5 course, as I said in my opening
07:15:49 6 statement, that does not mean that the
07:15:50 7 legislature have the sole voice.

07:15:53 8 The Supreme Court of the
07:15:55 9 United States held in the Arizona
07:15:56 10 State Legislature case that
07:15:57 11 redistricting can take different forms
07:16:01 12 in different states. And in Arizona
07:16:04 13 they had a Redistricting Commission.
07:16:05 14 In Pennsylvania, Congressional maps
07:16:07 15 are developed through the normal
07:16:09 16 legislative process.

07:16:12 17 They are proposed in a
07:16:13 18 bill. They have to pass both Houses.
07:16:15 19 The Governor then has to sign or veto
07:16:22 20 it. As we know, the Governor vetoed
07:16:29 21 the one bill.

07:16:30 22 And so there's clearly a role
07:16:30 23 for all branches of government,
07:16:31 24 including the courts. And the role
07:16:33 25 for the courts is you have to decide

07:16:36 1 which criteria, the neutral criteria
07:16:39 2 set forth in Mellow and then later in
07:16:44 3 League of Women Voters, has that been
07:16:47 4 met. And I think it is Attorney Voss
07:16:48 5 that used the phrase entry free ---
07:16:52 6 entry fee. And I wrote that down
07:16:54 7 because I liked it because it's worth
07:16:56 8 noting that --- that entry fee is sort
07:17:00 9 of the minimum standard that your map
07:17:04 10 needs to meet in order to get into the
07:17:07 11 contest. But that's not the end of
07:17:09 12 the question. Right.

07:17:10 13 And I note that the
07:17:12 14 Republican Intervenors
07:17:14 15 supported the Congressional map
07:17:17 16 in 2018 that was ultimately
07:17:19 17 found unconstitutional. But my
07:17:21 18 broader point is, is that
07:17:23 19 there's a longstanding,
07:17:25 20 established and most
07:17:26 21 importantly constitutional
07:17:28 22 process for creating
07:17:30 23 Congressional districts in
07:17:32 24 Pennsylvania that does not make
07:17:34 25 the legislature paramount to

07:17:39 1 other co-equal branches of
07:17:42 2 government. And that is what
07:17:43 3 makes the Republican
07:17:48 4 Intervenor calling for this
07:17:49 5 Court to give the now vetoed
07:17:49 6 map some kind of deference or
07:17:54 7 preference kind of
07:17:55 8 extraordinary in my mind.

07:17:57 9 Doing what the
07:17:59 10 Republican Intervenor has asked
07:17:59 11 the Court to do, select their
07:18:02 12 preferred map despite it being
07:18:04 13 vetoed by the Governor, would
07:18:06 14 have the Court do what the
07:18:07 15 intervenors could not do as
07:18:09 16 leaders of the legislature
07:18:12 17 chambers, garner enough votes
07:18:14 18 to override the Governor's
07:18:14 19 veto.

07:18:19 20 I'm not aware of another
07:18:21 21 situation in juris prudentially
07:18:22 22 which a court forced the
07:18:23 23 adoption of a bill onto the
07:18:25 24 citizens of the Commonwealth
07:18:27 25 that had been vetoed by the

07:18:30 1 Governor. That's not how the
07:18:31 2 system was designed to work and
07:18:34 3 that's essentially what they're
07:18:36 4 asking this Court to do by
07:18:38 5 asking the Court to simply give
07:18:40 6 their map deference by virtue
07:18:44 7 of the fact that it passed two
07:18:47 8 houses.

07:18:48 9 And it's not exactly
07:18:49 10 correct that the map was ---
07:18:52 11 that particular map was the
07:18:57 12 only one proposed that was
07:18:59 13 drawn in public but through an
07:19:01 14 accountable process. And that
07:19:04 15 it represents the will of the
07:19:06 16 legislature, but you know, the
07:19:07 17 map was drawn in a partisan
07:19:14 18 process and it was approved in
07:19:15 19 a partisan manner. Not a
07:19:16 20 single Democratic in the
07:19:19 21 General Assembly voted for that
07:19:19 22 map. And House Bill 2146 was
07:19:24 23 rejected in a bipartisan manner
07:19:26 24 because some House Republican
07:19:29 25 members actually did not vote

07:19:30 1 for it. So if you need
07:19:31 2 additional evidence that House
07:19:34 3 Bill 2146 is not the
07:19:36 4 legislature's maps, all you
07:19:37 5 need to do is consider that all
07:19:40 6 four caucuses of the General
07:19:42 7 Assembly separately are
07:19:43 8 intervenors in this case. The
07:19:44 9 map approved by the legislature
07:19:46 10 is merely a reflection of the
07:19:50 11 position of the leaders of the
07:19:52 12 Republican party and
07:19:52 13 legislature, two of the four
07:19:55 14 caucuses.

07:19:55 15 It doesn't automatically
07:19:58 16 cloak those maps in some type
07:19:59 17 of presumption of fairness,
07:20:05 18 legality or even inequality.
07:20:05 19 The Republican map --- the
07:20:11 20 Republican map, House Bill
07:20:13 21 2146, therefore is due no
07:20:13 22 deference.

07:20:14 23 Of course, partnership
07:20:16 24 should not be and is not the
07:20:19 25 sole criterion for rejecting a

07:20:20 1 map. Redistricting of course
07:20:22 2 is an inherently political
07:20:25 3 process. But when partisanship
07:20:28 4 manifests itself as --- under
07:20:28 5 constitutional criteria, those
07:20:29 6 maps cannot go forward. And
07:20:31 7 while the Republican
07:20:32 8 Intervenor may dismiss those
07:20:33 9 concerns as policy choices,
07:20:36 10 that's just not true because
07:20:38 11 that's not Pennsylvania law.

07:20:40 12 And so what I would like
07:20:42 13 to say briefly in closing is
07:20:46 14 just take a look at some of the
07:20:50 15 things that these maps have
07:20:53 16 done, the Republican maps have
07:20:55 17 done, particularly both the
07:20:57 18 House and Senate proposal and
07:20:58 19 the Congressional Republican
07:21:00 20 proposal. We're going to go
07:21:02 21 from an even split to nine
07:21:05 22 Republican safe seats when
07:21:07 23 there are 500,000 more
07:21:10 24 registered Democrats in
07:21:12 25 Pennsylvania.

07:21:13 1 There will be the split
07:21:14 2 of Harrisburg. There will be
07:21:16 3 the movement of Philadelphia
07:21:17 4 suburbs into more rural
07:21:18 5 districts, not to mention
07:21:20 6 whatever would happen with the
07:21:22 7 City of Pittsburgh.

07:21:24 8 So all lumped together,
07:21:26 9 these indelible defects make
07:21:29 10 the maps proposed by the
07:21:30 11 leaders of the House and Senate
07:21:32 12 Republicans and Republican
07:21:35 13 Congressional Intervenors
07:21:38 14 unacceptable under the
07:21:38 15 constitutional criteria.

07:21:39 16 And I see my time is
07:21:40 17 short and I would just like to
07:21:42 18 close by saying, you know, I
07:21:48 19 don't envy your job right now
07:21:50 20 particularly because to me the
07:21:53 21 issue is not which map is
07:21:56 22 better under these criteria.
07:21:57 23 All these maps are the same
07:21:59 24 within a range of
07:22:00 25 reasonableness. Likely anybody

07:22:02 1 could find that one of these
07:22:05 2 maps satisfies the
07:22:07 3 constitutional criteria. But
07:22:08 4 the question is what do you do
07:22:10 5 to break the tie.
07:22:11 6 And I think to break the
07:22:13 7 tie, one, you would look at
07:22:15 8 Mellow and at the League of
07:22:20 9 Women Voters case where the
07:22:21 10 Supreme Court predicted that
07:22:25 11 map mapping would advance to
07:22:26 12 the point where you could make
07:22:27 13 up a map that met the six
07:22:32 14 constitutional criteria but
07:22:33 15 still not satisfy
07:22:35 16 Pennsylvania's Free and Equal
07:22:38 17 Election Clause. And so, as a
07:22:41 18 result, we would suggest that
07:22:42 19 this Court take a look at some
07:22:43 20 of the subjective factors that
07:22:44 21 all of these witnesses
07:22:45 22 testified about and consider
07:22:47 23 the partisan makeup of these
07:22:50 24 various districts in order to
07:22:53 25 protect the power of one person

07:22:56 1 and one vote and not to dilute
07:22:58 2 any votes of any Pennsylvanian.
07:23:03 3 Thank you, Your Honor.

07:23:04 4 And as for the election
07:23:06 5 calendar, if I may just briefly
07:23:07 6 ---?

07:23:07 7 JUDGE McCULLOUGH:

07:23:08 8 Yes.

07:23:09 9 ATTORNEY SENOFF:

07:23:09 10 We agree with the Senate
07:23:09 11 Republicans. But as I said in
07:23:10 12 conference earlier, I did have
07:23:13 13 a chance to take a look at
07:23:14 14 President Judge Craig's Opinion
07:23:17 15 in Mellow, which is appended to
07:23:21 16 the Supreme Court's Opinion,
07:23:24 17 and he does talk about in there
07:23:28 18 that the idea of maintaining a
07:23:30 19 single primary day should be
07:23:33 20 something that would be given
07:23:36 21 paramount consideration in
07:23:39 22 order just to avoid the
07:23:40 23 confusion of potentially having
07:23:42 24 a primary for congressional and
07:23:44 25 a primary for everybody else on

07:23:47 1 different timelines with
07:23:49 2 different petitioning periods,
07:23:49 3 it would just be
07:23:55 4 administratively unworkable.
07:23:56 5 So I suggest his solution seems
07:23:58 6 like a reasonable one in this
07:24:00 7 instance. Thank you, Your
07:24:01 8 Honor.

07:24:01 9 JUDGE McCULLOUGH:
07:24:01 10 Thank you very much,
07:24:02 11 counsel. Next we'll move to
07:24:02 12 Congressional Intervenor.
07:24:17 13 Attorney Haverstick?

07:24:17 14 ATTORNEY HAVERSTICK:
07:24:18 15 May it please the Court,
07:24:18 16 good afternoon, Your Honor.
07:24:20 17 Matt Haverstick for the
07:24:21 18 Congressional Intervenor.

07:24:23 19 Let's start where we
07:24:24 20 always must, the Constitution.
07:24:27 21 Article 2, Section 16, has been
07:24:30 22 applied by League of Women
07:24:32 23 Voters to this context is a
07:24:34 24 directed to the Court and to
07:24:36 25 the General Assembly, but here

07:24:38 1 we're talking about the Court,
07:24:39 2 about what the floor
07:24:40 3 considerations are for a map.
07:24:42 4 These are must haves. These
07:24:46 5 can't be negotiated away. They
07:24:48 6 can't be watered down. They
07:24:48 7 can't be bargained away. They
07:24:48 8 can't be traded up.

07:24:53 9 With these metrics the
07:24:55 10 Reschenthaler maps are
07:24:57 11 superior, they are at the top,
07:24:58 12 the top two I believe in terms
07:25:00 13 of compactness. Of course, I
07:25:06 14 think we all recognize --- and
15 parenthetically, it's
16 recognized by Dr. Burnell's
17 report that numerically our
18 districts are equivalent as
19 they need to be. Dr. Brunell's
20 report has not been rebutted by
21 any expert or any other
22 testimony in this case.

07:25:23 23 The most important
07:25:25 24 factor I think, though, for
07:25:26 25 this Court to look at when it's

07:25:27 1 considering the hard stop
07:25:28 2 constitutional requirements are
07:25:30 3 splits. The language again in
07:25:36 4 Article 2, Section 16, is
07:25:38 5 directive. It doesn't brook
07:25:40 6 any compromise when it says
07:25:41 7 split the least amount of
07:25:42 8 counties, districts, et cetera,
07:25:44 9 as possible.

07:25:45 10 There's only one map
07:25:46 11 that splits counties --- really
07:25:52 12 there's two maps that split the
07:25:53 13 counties in the least amount at
07:25:55 14 13, and those are the
07:25:56 15 Reschenthaler maps.

07:25:57 16 Other experts have
07:25:59 17 acknowledged that they could
07:26:00 18 have drawn maps with 13 county
07:26:04 19 splits if possible but they
07:26:07 20 didn't. There has been no
07:26:10 21 evidence presented of any other
07:26:10 22 map by any of the presenters
07:26:10 23 that split counties that equal
07:26:16 24 amount or less than the
07:26:16 25 Reschenthaler maps.

07:26:17 1 The Reschenthaler maps
07:26:18 2 also tied. I think for first
07:26:18 3 place, if you want to look at
07:26:24 4 it that way for municipal
07:26:26 5 splits. So there are two maps
07:26:27 6 that undisputedly perform
07:26:29 7 better than any other on
07:26:30 8 objective factors in the
07:26:33 9 constitution, and those are the
07:26:34 10 Reschenthaler maps.

07:26:35 11 Now, I recognize that
07:26:35 12 the Court may not see it that
07:26:37 13 way. They may have a different
07:26:38 14 view of what the constitution
07:26:40 15 requires. And I credit Mr.
07:26:42 16 Senoff for acknowledging that
07:26:45 17 there are other things that can
07:26:49 18 be looked at in your decision
07:26:50 19 for what maps --- or what map
07:26:52 20 is the appropriate
07:26:54 21 Congressional map for
07:26:55 22 Pennsylvania.

07:26:56 23 You know, I had thought
07:26:57 24 at one point even this
07:26:59 25 afternoon that I was going to

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07:27:00 1 come to the podium and bash on
07:27:06 2 computers and bash on computers
07:27:07 3 and make some funny statement
07:27:07 4 INEAC or Watson or something
07:27:10 5 like that. But you know,
07:27:10 6 especially with Dr. Duchin
07:27:13 7 yesterday, I've come to
07:27:14 8 understand and appreciate these
07:27:16 9 computer models. Because when
07:27:19 10 they are applied neutrally to
07:27:20 11 Pennsylvania's admittedly
07:27:22 12 unique political geography that
07:27:25 13 multiple experts, including Dr.
07:27:27 14 Duchin recognized favor
07:27:28 15 Republicans not by malice, not
07:27:31 16 because of a grand plan, it's
07:27:34 17 just where people live in
07:27:36 18 Pennsylvania, an immutable
07:27:36 19 characteristic at least for ten
07:27:38 20 years. When computers run
07:27:39 21 those models, applying our
07:27:41 22 neutral constitutional
07:27:43 23 criteria, guess what, the maps
07:27:45 24 are overwhelmingly favorable to
07:27:48 25 Republican congressional seats.

07:27:51 1 Overwhelmingly favorable.

07:27:54 2 So Dr. Duchin and

07:27:56 3 multiple other experts

07:27:58 4 acknowledge in the state and

07:27:59 5 nature of Pennsylvania when you

07:28:00 6 run these maps with the neutral

07:28:02 7 criteria, they favor

07:28:03 8 Republicans.

07:28:05 9 I like it. I think that

07:28:07 10 is indicative of the map that

07:28:09 11 we drew and the Reschenthaler

07:28:12 12 maps. And I think that's the

07:28:14 13 right result, because it's a

07:28:15 14 neutral application of facts on

07:28:19 15 the ground, numbers on the

07:28:21 16 ground, the census data.

07:28:23 17 Here's the part of the

07:28:24 18 computing that I don't like.

07:28:26 19 We heard lots of testimony

07:28:31 20 about map equations and formula

07:28:33 21 that purport to resolve a

07:28:35 22 problem that isn't really a

07:28:37 23 problem. This idea that

07:28:38 24 there's got to be partisan

07:28:39 25 fairness. That there's an

07:28:41 1 efficiency gap, that votes are
07:28:44 2 wasted. And by the way, what
07:28:45 3 an offensive thing to say.
07:28:47 4 That if you learn that your
07:28:50 5 vote, if you cast, might not
07:28:51 6 help your candidate win because
07:28:55 7 somebody has too many votes, or
07:28:57 8 you know, your candidate is
07:28:58 9 going to get so many votes that
07:29:00 10 it doesn't matter, that your
07:29:04 11 vote is wasted. Is that what
07:29:04 12 these folks are telling
07:29:05 13 Pennsylvanians to do, don't
07:29:05 14 bothering voting your votes are
07:29:10 15 wasted. I'm sorry, I'm not
07:29:10 16 going to waste my time talking
07:29:13 17 about that.

07:29:14 18 But I do want to talk
07:29:15 19 about these equations that are
07:29:17 20 trying to over correct or make
07:29:18 21 more fair or make more
07:29:24 22 representatives and eliminate
07:29:24 23 what these experts acknowledge
07:29:24 24 is, again, an immutable fact
07:29:24 25 about Pennsylvania's political

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07:29:30 1 geography that Republicans live
07:29:31 2 in the T. Democrats are
07:29:32 3 concentrated in southeast and
07:29:36 4 in the southwest and to fix
07:29:37 5 that, we have to have all of
07:29:39 6 these other formulas to spread
07:29:41 7 this out.

07:29:42 8 There are two primary
07:29:43 9 problems I have with that, Your
07:29:43 10 Honor. The first thing we
07:29:44 11 don't have a parliament. We
07:29:46 12 have a Congress. We have a
07:29:47 13 winner take all electoral
07:29:49 14 system and there are going to
07:29:51 15 be times where the vote count
07:29:52 16 for statewide races when you do
07:29:54 17 partisan splits or party
07:29:57 18 politic splits are going to
07:29:59 19 suggest well, there were more
07:30:01 20 Republicans voting statewide in
07:30:03 21 a race than in individual
07:30:05 22 districts who elected Democrats
07:30:07 23 or Republicans, and those
07:30:08 24 numbers aren't always going to
07:30:10 25 match up.

07:30:11 1 But that's what happens
07:30:12 2 sometimes when you don't have a
07:30:18 3 parliamentary system. And we
07:30:18 4 don't turn parliament with
07:30:19 5 these false or ginned up
07:30:24 6 equations that are really back
07:30:24 7 to gerrymander. But here's the
07:30:27 8 more pressing problem with
07:30:29 9 these things.

07:30:30 10 And it was candidly ---
07:30:32 11 and I appreciate you saying so,
07:30:32 12 acknowledged by Dr. Duchin,
07:30:36 13 these formulas are attempts to
07:30:37 14 offer correct for a very
07:30:38 15 specific partisan purpose, the
07:30:41 16 natural inclination of
07:30:42 17 Pennsylvanians to elect
07:30:46 18 Republicans based on political
07:30:47 19 geography.

07:30:48 20 Again, not based on
07:30:49 21 malice or intent, just based on
07:30:53 22 where they live. She testified
07:30:56 23 I like these formulas because
07:30:56 24 they're going to spread out
07:30:57 25 more Democratic votes and

07:31:00 1 they're going to make it more
07:31:01 2 even. And I am doing that
07:31:02 3 deliberately. That's
07:31:03 4 gerrymandering.

07:31:03 5 When you --- that's
07:31:05 6 gerrymandering, and that's what
07:31:05 7 the League of Women Voters had
07:31:08 8 a problem with. The Supreme
07:31:10 9 Court had a problem with League
07:31:12 10 of Women Voters this notion
07:31:13 11 that you should ignore facially
07:31:15 12 neutral criteria and instead
07:31:18 13 try to purposely district based
07:31:21 14 on party politics. That's a
07:31:23 15 gerrymander.

07:31:24 16 When the Governor splits
07:31:26 17 Pittsburgh in two, I would
07:31:27 18 submit that is a funny shape,
07:31:29 19 just like the funny shapes that
07:31:30 20 were attacked in League of
07:31:33 21 Women Voters, and especially
07:31:33 22 when it's done for the
07:31:34 23 invalidly --- for the
07:31:40 24 admittedly invalid purpose of a
07:31:43 25 partisan basis or for partisan

07:31:45 1 politics, which is spread out
07:31:47 2 Democrats so they have more
07:31:50 3 influence. That is
07:31:50 4 gerrymandering. We can't do
07:31:52 5 that. This Court can't do
07:31:53 6 that.

07:31:54 7 I'm out of time, Your
07:31:55 8 Honor. I'd like to close by
07:31:56 9 acknowledging that Dr. Naughton
07:32:00 10 while not a mathematician, not
07:32:02 11 a computer scientist, I think,
07:32:03 12 had something very valuable to
07:32:06 13 talk to this Court about. And
07:32:07 14 it wasn't about which map is
07:32:12 15 --- is sort of the best.

07:32:13 16 Right? Although I would
07:32:14 17 say --- and I wasn't the one
07:32:15 18 that asked him the question.
07:32:16 19 The only testimony from Dr.
07:32:18 20 Naughton about a good map in
07:32:19 21 terms of the political
07:32:20 22 geography was the Reschenthaler
07:32:23 23 maps.

07:32:23 24 But what Dr. Naughton
07:32:26 25 reminded us and reminded this

07:32:28 1 Court is that we are
07:32:29 2 redistricting for people. We
07:32:31 3 are not redistricting for
07:32:33 4 political parties, we're not
07:32:35 5 redistricting for particular
07:32:38 6 Congressmen and women, we're
07:32:40 7 redistricting for
07:32:41 8 Pennsylvanians. And these
07:32:43 9 Pennsylvanians deserve to get
07:32:44 10 districts that reflect, as Dr.
07:32:47 11 Naughton said, not that they
07:32:49 12 are red or blue widgets but
07:32:51 13 they are people who, frankly,
07:32:52 14 don't think about politics, he
07:32:54 15 testified all that much at all.
07:32:55 16 They have a lot more important
07:32:57 17 things going on. And
07:33:00 18 understanding what those
07:33:02 19 important things are and
07:33:03 20 understanding why they care
07:33:04 21 about their communities, why
07:33:06 22 they want to be associated in
07:33:07 23 one community and not another.
07:33:09 24 Where there natural affinities
07:33:11 25 are. What they are pressing

07:33:13 1 social and economic issues are,
07:33:14 2 those are the things that you
07:33:16 3 have to bear in mind.

07:33:17 4 JUDGE McCULLOUGH:

07:33:17 5 And Counsel, could you
07:33:18 6 also just address the election
07:33:20 7 schedule quickly.

07:33:24 8 ATTORNEY HAVERSTICK:

07:33:24 9 Quickly, Your Honor,
07:33:25 10 there is absolutely no reason
07:33:26 11 to move the calendar. I don't
07:33:28 12 yet take a position onto move
07:33:30 13 the primary. I think that's
07:33:31 14 premature.

07:33:32 15 But in 2018 the
07:33:34 16 Secretary moved the calendar,
07:33:38 17 and I think the --- you know,
07:33:39 18 if you correct for this year's
07:33:40 19 calendar, it would be I think
07:33:41 20 February 22nd we could have a
07:33:43 21 map. It's not the first time
07:33:44 22 the Secretary had said we can't
07:33:45 23 do it, we can't do it and does
07:33:47 24 it. They did it in League of
07:33:51 25 Women Voters, they frankly did

07:33:52 1 it in the ballot question
07:33:54 2 issue, if you recall a few
07:33:56 3 years ago and it got changed at
07:33:59 4 the last minute for retirement
07:34:01 5 age for Justices. And they
07:34:04 6 said they couldn't move the
07:34:04 7 deadlines and then they moved
07:34:05 8 the deadlines and it all worked
07:34:05 9 out fine. It can be done.

07:34:06 10 JUDGE MCCULLOUGH:

07:34:06 11 Okay.

07:34:07 12 Just to be clear, did
07:34:07 13 you say no reason not to move
07:34:09 14 the calendar.

07:34:10 15 ATTORNEY HAVERSTICK:

07:34:10 16 I think the calendar
07:34:11 17 should be moved.

07:34:12 18 JUDGE McCULLOUGH:

07:34:15 19 You are talking about
07:34:16 20 circulation of petitions?

07:34:18 21 ATTORNEY HAVERSTICK:

07:34:19 22 Yes, ma'am. Thank you,
07:34:21 23 Your Honor.

07:34:21 24 JUDGE MCCULLOUGH:

07:34:21 25 Thank you, Mr.

07:34:26 1 Haverstick.

07:34:27 2 And now House of

07:34:28 3 Representatives is going first?

07:34:28 4 Okay.

07:34:30 5 Representative

07:34:30 6 Benninghoff and Cutler.

07:34:41 7 Attorney Lewis.

07:34:41 8 ATTORNEY LEWIS:

07:34:42 9 Your Honor, when the ---

07:34:42 10 when this trial began we said

07:34:44 11 that the evidence would show

07:34:45 12 that the General Assembly's

07:34:46 13 plan House Bill 2146, adheres

07:34:48 14 to the traditional districting

07:34:51 15 criteria set forth in

07:34:53 16 Pennsylvania's Constitution.

07:34:54 17 The evidence has borne that

07:34:56 18 out. It is undisputed in this

07:34:58 19 case, that HB-2146 is equal

07:35:07 20 population is contiguous intact

07:35:07 21 and respect and the integrity

07:35:09 22 of the Pennsylvania counties,

07:35:10 23 political subdivisions and

07:35:12 24 precincts.

07:35:14 25 Governor Wolf's own

07:35:15 1 expert agreed. And it meets
07:35:17 2 those criteria, in fact, better
07:35:19 3 than many of the plans. In
07:35:20 4 particular House Bill 2146
07:35:23 5 performs very well in
07:35:24 6 preserving the integrity of
07:35:25 7 political subdivisions. A
07:35:27 8 preeminent criteria that has
07:35:30 9 part of Pennsylvania's
07:35:33 10 Constitution since 1790.

07:35:36 11 In contrast, whether by
07:35:37 12 splitting the City of
07:35:37 13 Pittsburgh as the Governor in
07:35:39 14 both senate Democratic plans
07:35:41 15 --- and I believe some of the
07:35:43 16 Amici as well, or by splitting
07:35:45 17 precincts or by playing other
07:35:47 18 games many of the plans
07:35:51 19 subordinate those criteria.

07:35:52 20 Back to 2146. HB-2146
07:35:54 21 was the product of the most
07:35:56 22 transparent process and what we
07:35:57 23 understand in the
07:35:58 24 Commonwealth's history. The
07:36:00 25 House held 11 regional

07:36:01 1 hearings, took comments from
07:36:04 2 hundreds of members of the
07:36:05 3 public and many people
07:36:06 4 testified, and ultimately
07:36:09 5 adopted a map not drawn by a
07:36:11 6 super computer. Not drawn in a
07:36:14 7 back smoked filled room. But
07:36:17 8 drawn well-known good
07:36:18 9 government advocate Amanda
07:36:19 10 Holt. Yes, that Holt from the
07:36:21 11 Pennsylvania Supreme Court Holt
07:36:22 12 decisions of the last decade.

07:36:24 13 This plan was subject to
07:36:28 14 public scrutiny for many weeks
07:36:30 15 before it's passage, which of
07:36:30 16 course is way many of the
07:36:30 17 experts in this case were able
07:36:32 18 to analyze 2146 in their
07:36:35 19 opening reports, not just the
07:36:36 20 rebuttal reports.

07:36:37 21 No other plan before
07:36:38 22 this Court has gone through
07:36:40 23 that kind of public scrutiny
07:36:41 24 and deliberative process that
07:36:44 25 the Pennsylvania General

07:36:45 1 Assembly undertook and is in
07:36:48 2 the best position to undertake
07:36:50 3 as the body charged with this
07:36:52 4 role. In fact, this trial is
07:36:56 5 still unclear who drew most of
07:36:56 6 these plans placed before the
07:36:57 7 Court for consideration.

07:36:58 8 Let's turn to the
07:37:01 9 politics. From a partisan
07:37:02 10 standpoint HB-2146 is balanced.
07:37:06 11 It draws nine Democratic
07:37:08 12 leaning districts to eight
07:37:10 13 Republican leaning districts
07:37:14 14 which is very much in line with
07:37:16 15 the Nine-to-Nine plan drawn by
07:37:17 16 the Pennsylvania Supreme Court
07:37:19 17 special master in 2018. That
07:37:20 18 is a commonsense resolved and
07:37:22 19 it is consistent with Mellow,
07:37:23 20 which found favor in that case
07:37:25 21 with a plan that evenly divides
07:37:28 22 the loss between two seats by
07:37:29 23 the parties.

07:37:30 24 It's also consistent
07:37:31 25 with language in the League of

07:37:36 1 Women Voters decision that
07:37:36 2 recognizes as a permissible
07:37:37 3 redistricting principle, the
07:37:37 4 maintenance of the political
07:37:38 5 balance, which existed prior to
07:37:40 6 the prior reapportionment.
07:37:43 7 Nine-to-nine --- going from and
07:37:43 8 nine-to-nine to nine-to-eight
07:37:46 9 just makes sense. In fact,
07:37:46 10 unable to meaningfully
07:37:51 11 demonstrate that 2146 is not a
07:37:52 12 valid plan, a lot of the other
07:37:53 13 parties have asked the Court to
07:37:54 14 embark on a beauty contest, to
07:37:57 15 pick the best or the fairest
07:37:59 16 map, exactly as my colleague
07:38:02 17 Mr. Tucker predicted yesterday
07:38:07 18 morning.

07:38:07 19 But adherence to
07:38:07 20 traditional districting
07:38:07 21 criteria, the essential
07:38:08 22 standards set forth in League
07:38:10 23 of Women Voters and the main
07:38:11 24 focus of Mellow serves as the
07:38:14 25 north star to guide a fairy

07:38:17 1 districting process in the
07:38:18 2 stormy seas of shifting
07:38:18 3 partisan preferences of the
07:38:18 4 Commonwealth's voters.

07:38:24 5 Regardless, let's go
07:38:26 6 down the fairness rabbit hole
07:38:27 7 for a moment. It is
07:38:29 8 established in this case, and
07:38:32 9 undisputed that drawing maps
07:38:32 10 without referencing the
07:38:36 11 partisan and racial data will
07:38:36 12 generate a slight tilt towards
07:38:39 13 Republicans. That is due to
07:38:41 14 public geography where the
07:38:43 15 voters live.

07:38:44 16 Dr. Barber's simulations
07:38:46 17 demonstrated that. In fact,
07:38:47 18 the only other expert in this
07:38:49 19 case ran a simulation, Dr.
07:38:49 20 Duchin, got a consistent
07:38:51 21 result. So a fair process
07:38:53 22 might result in a tilt, but
07:38:56 23 that's not because the process
07:38:58 24 is unfair. It's because this
07:39:01 25 moment in history in

07:39:01 1 Pennsylvania Democratic
07:39:01 2 supporting supporters are
07:39:01 3 concentrated in the city and
07:39:08 4 Republicans are not.

07:39:09 5 Nonetheless HB-2146
07:39:10 6 produces a very competitive map
07:39:13 7 with a nine Democratic seat
07:39:15 8 line and an eight Republican
07:39:16 9 seat lean. As Dr. Barber
07:39:19 10 confirms, it's five competitive
07:39:20 11 districts more than any other
07:39:22 12 submission and as Carter's
07:39:24 13 Petitioner expert, Dr. Rodden,
07:39:26 14 conceded under the right
07:39:28 15 electoral environment could
07:39:30 16 swing up to ten Democratic
07:39:32 17 seats. It is hard to describe
07:39:35 18 HB-2146 as unfair. Perhaps
07:39:37 19 unsurprisingly, most of the
07:39:38 20 experts have downplayed looking
07:39:40 21 at fairness based on expected
07:39:40 22 seat share, which is sort of
07:39:42 23 how everyone in politics
07:39:42 24 understands this.

07:39:44 25 But instead focused

07:39:46 1 on these , you know, interesting
07:39:47 2 but complex mathematical
07:39:50 3 partisan fairness measures. So
07:39:52 4 we have heard at length about
07:39:54 5 how negative .02 median
07:39:55 6 difference is unfair, but a
07:39:56 7 negative .006 difference is
07:39:59 8 somehow fair or a declination
07:40:02 9 score or some other metric.
07:40:04 10 The hyper focus on these
07:40:06 11 metrics masks real fairness
07:40:08 12 concerns with many of the
07:40:10 13 submissions.

07:40:10 14 The Carter, Gressman,
07:40:13 15 Wolf and Senate Democratic
07:40:16 16 maps --- well map 2 anyway,
07:40:16 17 draws a ten Democrat, seven
07:40:19 18 Republican map. The House
07:40:21 19 Democrats managed to beat the
07:40:22 20 field drawing 11 Democrat to 6
07:40:25 21 Republican plan. In what world
07:40:28 22 is it fair to go from a
07:40:30 23 nine-to-nine to a ten-to-seven
07:40:32 24 or to an eleven-to-six map in
07:40:35 25 such a closely divided state

07:40:35 1 like Pennsylvania.

07:40:35 2 It's especially
07:40:36 3 interesting in Carter's
07:40:36 4 Petitioners, which claimed to
07:40:40 5 have created a least change the
07:40:40 6 map, yet they still go from
07:40:42 7 nine-to-nine to a ten-to-seven.
07:40:49 8 Interesting how that worked
07:40:50 9 out.

07:40:50 10 Another problem
07:40:50 11 expressed for the fairest map,
07:40:50 12 that in order to achieve
07:40:52 13 excellent scores on these
07:40:53 14 different political science
07:40:54 15 measures, the map maker must
07:40:56 16 draw district boundaries to
07:41:01 17 overcome a natural advantage.
07:41:01 18 What that means is they're
07:41:02 19 assigning voters to districts
07:41:04 20 based not on traditional
07:41:06 21 criteria, but based on partisan
07:41:08 22 preferences.

07:41:08 23 Sorting voters in the
07:41:11 24 districts based on their
07:41:11 25 partisanship unfairly dilutes

07:41:11 1 the power of a community's
07:41:13 2 votes, the very concern in LWV.
07:41:15 3 Because this is about the
07:41:16 4 voters not the parties.

07:41:19 5 In any event, there's a
07:41:20 6 word for sorting voters based
07:41:22 7 on partisanship.
07:41:24 8 Gerrymandering. Dr. Barber's
07:41:29 9 rebuttal report shows that
07:41:29 10 Figure 5, Table 4's appendix,
07:41:31 11 it's very clear when you look
07:41:33 12 at those middle swing districts
07:41:35 13 that all the plans more or less
07:41:40 14 have, the Carter, Gressman,
07:41:40 15 Governor, House Dem, Senate Dem
07:41:43 16 plans all draw those Democratic
07:41:47 17 leaning than 96 to 100 percent
07:41:47 18 of the simulations.

07:41:49 19 So great the map scores
07:41:51 20 excellent on a metric, but
07:41:53 21 yields a map that gives
07:41:55 22 Democrats a big advantage. I
07:41:57 23 can go on, but I won't. You've
07:42:01 24 heard the testimony of several
07:42:02 25 experts who each argue that his

07:42:04 1 or her map is the best and
07:42:06 2 arguments over which is fair,
07:42:08 3 which is most compact. But I
07:42:11 4 think Dr. Naughton I think put
07:42:12 5 it best. There is no agreed
07:42:14 6 upon objective of fairness.
07:42:15 7 That's because it's a political
07:42:17 8 question. That's what Johnson
07:42:19 9 versus Wisconsin Election
07:42:22 10 Commission held in Wisconsin
07:42:22 11 Supreme Court last year. And
07:42:25 12 that's why once the General
07:42:27 13 Assembly's proposed plan is
07:42:28 14 shown to satisfy the
07:42:28 15 Constitutional criteria as ours
07:42:31 16 has, we would urge the Court to
07:42:32 17 defer to those legislative
07:42:34 18 policy choices. General
07:42:34 19 Assembly consists of 253
07:42:36 20 elected representatives. They
07:42:37 21 have the Constitutional role to
07:42:39 22 redistricting. And their
07:42:40 23 ability to do so in this case
07:42:42 24 was thwarted on only the
07:42:44 25 Governor's insistence on asking

07:42:46 1 the Court to give him a
07:42:46 2 ten-to-seven plan.

07:42:48 3 With that, Your Honor, I
07:42:48 4 see my time is up. And we'll
07:42:49 5 thank you for your time and
07:42:50 6 consideration.

07:42:50 7 JUDGE MCCULLOUGH:

07:42:51 8 I would like you to
07:42:51 9 comment on the election
07:42:52 10 schedule.

07:42:54 11 ATTORNEY LEWIS:

07:42:55 12 Your Honor, I think my
07:42:56 13 --- our clients would prefer to
07:43:00 14 a least possible change to any
07:43:01 15 election calendar. And we do
07:43:02 16 not believe changing the
07:43:03 17 primary date would be
07:43:04 18 appropriate.

07:43:07 19 JUDGE MCCULLOUGH:

07:43:08 20 Okay. Thank you,
07:42:54 21 Counsel.

07:42:54 22 ATTORNEY LEWIS:

07:42:54 23 Thank you, Your Honor.

07:43:10 24 Your Honor, I believe my
07:43:12 25 colleague and I have a flight

07:43:12 1 in about less than an hour.

07:43:13 2 May we have --- my colleague,

07:43:14 3 Mr. Mann, take over for us for

07:43:16 4 any further proceedings?

07:43:17 5 JUDGE MCCULLOUGH:

07:43:17 6 Yes. And I ---.

07:43:24 7 ATTORNEY LEWIS:

07:43:26 8 Thank you, Your Honor.

07:43:26 9 JUDGE MCCULLOUGH:

07:43:28 10 But the Senate?

07:43:28 11 ATTORNEY LEWIS:

07:43:28 12 Yes, they will.

07:43:26 13 JUDGE MCCULLOUGH:

07:43:26 14 Republicans are going to

07:42:54 15 make a closing statement?

07:42:54 16 ATTORNEY LEWIS:

07:42:54 17 Yes, they will, Your

07:43:26 18 Honor.

07:43:26 19 JUDGE MCCULLOUGH:

07:43:26 20 Yes. Thank you,

07:42:54 21 Counsel.

07:42:54 22 ATTORNEY LEWIS:

07:43:29 23 Thank you, Your Honor.

07:43:29 24 ATTORNEY HOLTZMAN:

07:43:55 25 Good afternoon, Your

1 Honor. May it please the
2 Court. Thank you for your time
3 and your careful attention to
4 this matter over the last
5 couple of days. Again, my name
6 is. Again, my name is Anthony
7 Holtzman and I represent
8 Senator Jake Coreman, the
9 President Pro Tempore of the
10 Pennsylvania Senate, along with
11 Senator Kim Ward, the Majority
12 Leader of the Pennsylvania
13 Senate.

14 Your Honor, during this
15 hearing, we've heard a lot of
16 testimony about how it's not
17 possible to predict the further
18 in many ways. That proposition
19 I think is generally true, but
20 yesterday there was an
21 exception to this rule.

07:44:06

22 Yesterday during my
23 opening statement I said that
24 during this hearing you would
25 here a lot of technical and

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07:44:11 1 complex testimony from
07:44:13 2 political scientists and
07:44:16 3 mathematicians. That turned
07:44:18 4 out to be true. I said you
07:44:20 5 would hear testimony about
07:44:22 6 algorithms and various formulas
07:44:23 7 and analytics that can be used
07:44:24 8 to evaluate redistricting plans
07:44:25 9 in differing ways and that
07:44:26 10 turned out to be true as well.

07:44:27 11 But most importantly,
07:44:29 12 Your Honor, I said the evidence
07:44:30 13 at this hearing would show that
07:44:31 14 the Congressional redistricting
07:44:33 15 plan that's embodied in HB-2146
07:44:37 16 meets all the applicable
07:44:38 17 redistricting requirements
07:44:40 18 including the requirements
07:44:44 19 regarding the compactness and
07:44:44 20 contiguous territory,
07:44:46 21 population equality and respect
07:44:46 22 for boundaries of the political
07:44:48 23 subdivisions.

07:44:49 24 Importantly that
07:44:50 25 predictions turned out to be

07:44:52 1 true as well. The fact that
07:44:53 2 HB-2146 meets those
07:44:55 3 requirements was confirmed, not
07:44:56 4 only by Dr. Barber the expert
07:45:00 5 witness who testified on behalf
07:45:01 6 of the House Republican
07:45:02 7 Intervenor but also by the
07:45:03 8 expert witnesses who testified
07:45:04 9 on behalf of the Governor and
07:45:06 10 the witnesses for essentially
07:45:08 11 all other parties as well.

07:45:10 12 The evidence also did
07:45:11 13 not show that the HB-2146 plan
07:45:13 14 is otherwise unlawful or unfair
07:45:16 15 in some other way. Your Honor,
07:45:18 16 not that there is any sort of
07:45:19 17 judicially manageable standard
07:45:21 18 for determining whether a given
07:45:23 19 plan is not sufficiently fair
07:45:25 20 for the Court to adopt it.

07:45:27 21 As the expert testimony
07:45:28 22 in this hearing plainly
07:45:30 23 illustrated, whether something
07:45:31 24 is fair depends on how you
07:45:32 25 define fair, and there are many

07:45:34 1 ways to define it, most of
07:45:35 2 which involve making subjective
07:45:38 3 judgments and all of which are
07:45:39 4 imprecise to some degree.

07:45:40 5 From a partisan
07:45:41 6 prospective every map that was
07:45:44 7 submitted for this Court's
07:45:46 8 consideration was deemed to be
07:45:47 9 fair in one venture or another.
07:45:51 10 And that an idea of a computer
07:45:52 11 or an individual expert witness
07:45:54 12 can somehow create a map that
07:45:56 13 has no partisan consequences
07:45:56 14 or affects whatsoever
07:45:58 15 completely false if not
07:46:00 16 outright laughable.

07:46:02 17 The Supreme Court of the
07:46:03 18 United States in this regard
07:46:03 19 has wisely observed that,
07:46:04 20 quote, politics and political
07:46:08 21 considerations are inseparable
07:46:08 22 for redistricting and
07:46:10 23 apportioning, closed quote.
07:46:10 24 That's from the Gaffney versus
07:46:13 25 Cummings decision handed down

07:46:14 1 in 1973.

07:46:16 2 So against this backdrop
07:46:18 3 we return to the point where we
07:46:19 4 started. Under the United
07:46:20 5 States and Pennsylvania
07:46:22 6 Constitutions, the task of
07:46:22 7 redistricting the
07:46:24 8 Commonwealth's Congressional
07:46:25 9 districts is expressly
07:46:27 10 committed to the Pennsylvania
07:46:28 11 General Assembly. It's a
07:46:30 12 fundamentally legislative task
07:46:32 13 and HB-2146 reflects this
07:46:34 14 principle. It embodies a
07:46:38 15 congressional redistricting
07:46:39 16 plan that both the Pennsylvania
07:46:41 17 Senate and the House have
07:46:42 18 thoughtfully considered and
07:46:43 19 passed. It reflects a
07:46:47 20 deliberative open legislative
07:46:47 21 process which involve
07:46:49 22 testimony, negotiations
07:46:51 23 compromise and policy judgments
07:46:52 24 in which the peoples elected
07:46:54 25 representatives undertook in

07:46:55 1 order to memorialize and
07:46:56 2 implement state policy that
07:46:58 3 reflects the will of their
07:46:59 4 continuants.

07:47:01 5 No other party or no
07:47:03 6 other Amici has presented to
07:47:05 7 court with the proposed
07:47:06 8 redistricting plan that has
07:47:08 9 made its way through any part
07:47:09 10 of the legislative process, let
07:47:11 11 alone the senate and House have
07:47:13 12 passed, let alone the plan
07:47:15 13 that's undergone any sort of
07:47:15 14 public vetting process or
07:47:17 15 public hearing process or
07:47:18 16 public process at all. Only
07:47:19 17 HB-2146 has done so.

07:47:22 18 Against this backdrop
07:47:23 19 HB-2146, as a legislatively
07:47:27 20 approved plan that meets all of
07:47:29 21 the redistricting criteria,
07:47:31 22 which is essentially undisputed
07:47:35 23 in this case and as a plan that
07:47:35 24 nobody should be, quote,
07:47:35 25 unquote, unfair is entitled to

07:47:37 1 deference from the Court in
07:47:38 2 order to honor the General
07:47:38 3 Assembly's constitution
07:47:43 4 prerogative to engage in
07:47:43 5 redistricting.

07:47:45 6 And Your Honor there is
07:47:46 7 precedent for this approach,
07:47:46 8 which is the Donnelly versus
07:47:47 9 Meskill decision from
07:47:48 10 Connecticut, which we cite in
07:47:50 11 our briefs. There, the Court
07:47:52 12 was positioned just like this
07:47:53 13 one, the legislature had passed
07:47:55 14 a map and the Governor vetoed
07:47:57 15 it, and picking the map
07:48:02 16 referring to the legislature
07:48:03 17 system, quote, the plan has had
07:48:04 18 added advantage that it's
07:48:07 19 basically the plan adopted by
07:48:09 20 the legislature, closed quote.
07:48:10 21 The Court later went on to say,
07:48:10 22 quote, the legislative adoption
07:48:13 23 of Public Act 807 tips the
07:48:15 24 scales in favor of the plan in
07:48:17 25 Exhibit B-1, which provides

07:48:18 1 districts essentially, as
07:48:20 2 outlined by the legislature,
07:48:20 3 with adjustments only as
07:48:22 4 necessary to bring about
07:48:24 5 virtually complete population
07:48:25 6 equality, closed quote.

07:48:26 7 The Court should reach
07:48:28 8 the same result in this case,
07:48:28 9 Your Honor, for the reasons
07:48:30 10 that I just mentioned and I
07:48:31 11 mentioned in my opening
07:48:32 12 statement.

07:48:32 13 Thank you for your
07:48:33 14 consideration.

07:48:33 15 JUDGE MCCULLOUGH:

07:48:34 16 And can you also comment
07:48:34 17 on the election schedule,
07:48:38 18 please?

07:48:38 19 ATTORNEY HOLTZMAN:

07:48:39 20 Certainly, Your Honor.
07:48:39 21 We take the position that of
07:48:39 22 course this is a matter that
07:48:39 23 can be addressed by the General
07:48:41 24 Assembly, if necessary, but we
07:48:42 25 recognize that the Court has

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07:48:43 1 changed these dates in the past
07:48:47 2 and they feel that conditions
07:48:50 3 are such that they must change
07:48:50 4 now because of the legal
07:48:51 5 posture of this matter. We
07:48:52 6 think changes should be limited
07:48:54 7 to only what's absolutely
07:48:57 8 necessary and don't support a
07:48:57 9 shortening of the petition
07:48:58 10 circulation and signature
07:48:58 11 gathering window, but we
07:48:58 12 otherwise don't have any
07:48:58 13 specific position on how it
07:49:05 14 affects the three primary dates
07:49:06 15 that exist on the calendar.

07:49:12 16 JUDGE MCCULLOUGH:

07:49:12 17 Thank you.

07:49:14 18 ATTORNEY HOLTZMAN:

07:49:14 19 Thank you very much.

07:49:22 20 JUDGE MCCULLOUGH:

07:49:22 21 And now we move to
07:49:25 22 Attorney Wiygul. And you're
07:49:25 23 presenting on behalf of both
07:49:25 24 Governor Wolf and Secretary
07:49:29 25 Chapman or just ---?

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ATTORNEY WIYGUL:

Why don't we start with
Governor Wolf, if that's okay,
Your Honor, since we're going
in reverse order?

JUDGE MCCULLOUGH:

Do you want ---?

ATTORNEY WIYGUL:

I won't --- I'm sorry, I
won't take --- but I promise I
won't be greedy about the time.
And before I start, I'd like
the Court staff, if it's
possible, I might like to use
the projector. Thank you.

JUDGE MCCULLOUGH:

You may. Is there
someone here that can still
operate --- there you go.

ATTORNEY WIYGUL:

Thank you. I realize
this is an unwelcomed task that
has been called before the
Court, but the Court and its
staff have been very welcoming

07:50:10 1 to us and very accommodating,
07:50:10 2 and I'd like to thank the Court
07:50:10 3 and staff for that.

07:50:11 4 The question before the
07:50:12 5 Court as set forth in Mellow
07:50:14 6 versus Mitchell, which was the
07:50:16 7 last Congressional impasse
07:50:18 8 redistricting case in
07:50:22 9 Pennsylvania, and it says which
07:50:22 10 of the plans timely offered to
07:50:23 11 this Court comes closest to the
07:50:24 12 constitutional standards in all
07:50:26 13 pertinent respects. But as to
07:50:27 14 the question of what those
07:50:28 15 constitutional standards are,
07:50:30 16 the League of Women Voters case
07:50:32 17 is the leading and on-point
07:50:35 18 precedent. And it says that
07:50:39 19 the Free Equal Election Clause
07:50:39 20 governs all aspects of the
07:50:40 21 electoral process, including
07:50:40 22 the apportionment, and provides
07:50:42 23 the people of this Commonwealth
07:50:44 24 with equally effective power to
07:50:45 25 select the representative of

07:50:46 1 his or her choice and bars the
07:50:48 2 dilution of the people's power
07:50:50 3 to do so.

07:50:51 4 And the Court also went
07:50:53 5 on to tell us how a map should
07:50:56 6 be evaluated under this
07:50:58 7 constitutional standard. But
07:51:01 8 first we have to determine
07:51:02 9 whether the plan comports with
07:51:03 10 certain neutral floor criteria,
07:51:05 11 which the Court has heard an
07:51:07 12 awful lot about in the last two
07:51:09 13 days. But the second, it
07:51:10 14 should go on to ensure that
07:51:11 15 even if a plan meets these
07:51:14 16 criteria, it does not,
07:51:14 17 nevertheless, operate to
07:51:14 18 unfairly dilute the power of a
07:51:18 19 particular group's vote for a
07:51:19 20 Congressional Representative,
07:51:20 21 such as by entrenching the
07:51:23 22 structural partisan advantage.

07:51:25 23 And even though the
07:51:26 24 Court has heard a lot of
07:51:28 25 evidence from a lot of

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07:51:29 1 different experts, I think the
07:51:30 2 picture is actually pretty
07:51:32 3 clear when you take a step
07:51:33 4 back. And I would refer to
07:51:36 5 some of the analyses that Dr.
07:51:40 6 Duchin did in this case that I
07:51:41 7 think helps to identify a lot
07:51:41 8 of what we seek to talk about.

07:51:44 9 And I don't know if I
07:51:45 10 need to put it up here, but
07:51:47 11 I'll just remind the Court that
07:51:47 12 Dr. Duchin gave a chart of the
07:51:49 13 performance of the various
07:51:51 14 plans of the traditional
07:51:52 15 criteria. That was page two,
07:51:54 16 Table 1, of her response
07:51:55 17 report. And we know that all
07:51:56 18 the plans are --- essentially
07:51:58 19 have equal population
07:51:59 20 distribution. All the plans
07:52:00 21 are contiguous. So the real
07:52:02 22 action here is on compactness
07:52:03 23 and on subdivision splits. And
07:52:07 24 the Court has heard --- I don't
07:52:10 25 think there is any serious

07:52:11 1 disagreement that there are
07:52:12 2 trade-offs between those two
07:52:13 3 metrics. It's not a matter of
07:52:14 4 trying to minimize one or the
07:52:15 5 other. I think there's broad
07:52:16 6 agreement on that front.

07:52:18 7 And what Dr. Duchin said
07:52:20 8 and I think the statistics bare
07:52:21 9 this out is that, in general, a
07:52:22 10 lot of the plans before this
07:52:23 11 Court do well on the
07:52:24 12 traditional criteria. They're
07:52:26 13 acceptable under the
07:52:27 14 traditional criteria, but there
07:52:29 15 are a few that do particularly
07:52:31 16 well, that achieve a standard
07:52:32 17 of excellence. And as Dr.
07:52:37 18 Duchin described, the
07:52:38 19 Governor's plan is among those.

07:52:44 20 So then where do we go?
07:52:46 21 Well, we have to go on to the
07:52:48 22 next phase of the analysis,
07:52:51 23 which is to look at partisan
07:52:51 24 fairness, to look at whether
07:52:51 25 despite meeting this

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07:52:56 1 traditional criteria, there are
07:52:58 2 plans that do a better or worse
07:53:00 3 job of achieving partisan
07:53:01 4 fairness. And again, I think
07:53:03 5 if you look at the expert
07:53:04 6 testimony in this case you will
07:53:05 7 see broad agreement that
07:53:06 8 partisan fairness can be
07:53:08 9 meaningfully and helpfully
07:53:13 10 assessed and how to do that.

07:53:15 11 Now, to be sure there
07:53:16 12 are variations in the metrics
07:53:17 13 and we saw slightly different
07:53:19 14 scoring among the experts, and
07:53:21 15 the Court saw slightly
07:53:22 16 different scoring metrics
07:53:23 17 applied to partisan fairness.
07:53:28 18 But with rare exceptions, which
07:53:28 19 I suggest but won't get into,
07:53:28 20 were not articulated by the
07:53:33 21 expert, broad agreement that
07:53:33 22 you can measure partisan
07:53:35 23 fairness in several different
07:53:37 24 ways. And I would suggest the
07:53:40 25 notion that it's somehow so

07:53:40 1 subjective as to be
07:53:40 2 immeasurable. It's just not
07:53:45 3 credible and it doesn't comport
07:53:46 4 with the reality of our
07:53:47 5 politics, which is that
07:53:47 6 legislatures and politicians
07:53:51 7 have been using exactly those
07:53:52 8 criteria to gerrymander for
07:53:55 9 decades. They have been
07:53:56 10 looking on the wrong side of
07:53:58 11 those criteria. They've been
07:53:59 12 looking to use those criteria
07:53:59 13 to assess what map will give
07:54:01 14 their party an unfair,
07:54:05 15 entrenched structural
07:54:06 16 advantage.
07:54:07 17 And I think anyone who's been
07:54:08 18 living in American politics for
07:54:10 19 the last few decades knows
07:54:12 20 that's the case. So we're
07:54:13 21 saying let's use those metrics
07:54:15 22 for good instead of for
07:54:18 23 gerrymandering. Let's use them
07:54:23 24 to get to a system where we
07:54:23 25 don't have maps, where on a

07:54:25 1 systematic basis the party
07:54:26 2 winning less than 60 percent of
07:54:28 3 the votes gets more than
07:54:29 4 60 percent of the seats.
07:54:31 5 That's what it means at the end
07:54:33 6 of the day I think. And the
07:54:34 7 notion that I'm talking about
07:54:36 8 something that only applies to
07:54:37 9 parliamentary systems, that
07:54:39 10 just doesn't hold water, Your
07:54:40 11 Honor. I believe we can all
07:54:41 12 agree that we're in a small D
13 democracy. And one of the
14 fundamental principles in a
15 small D democracy is that the
16 majority should rule. We
17 shouldn't end up with a map, if
18 we can possibly avoid it, where
07:54:53 19 again on a regular basis less
07:54:54 20 than 50 percent of the votes
07:54:55 21 lead to more than 50 percent of
07:54:58 22 the seats. That is not small D
07:55:02 23 democratic.
07:55:02 24 So then what did we hear
07:55:03 25 from the advocates of such a

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07:55:05 1 system? Well, they say it is
07:55:07 2 unavoidable we live in a state
07:55:09 3 with political geography and
07:55:11 4 that political geography is
07:55:15 5 predisposed towards structural
07:55:16 6 advantage for one of the
07:55:17 7 parties. But the evidence
07:55:18 8 shows that simply isn't true.
07:55:21 9 Yes, it may be true that if you
07:55:22 10 you generated random maps under
07:55:25 11 certain parameters that were
07:55:26 12 completely blind as to
07:55:27 13 fairness, more of those maps
07:55:29 14 would end up in a structural
07:55:31 15 advantage for one of the
07:55:32 16 parties, but the notion that
07:55:35 17 they want to give the Court,
07:55:36 18 which is that there is a choice
07:55:38 19 between meeting the traditional
07:55:40 20 criteria and partisan fairness,
07:55:41 21 is a false choice. And I think
07:55:43 22 the evidence unmistakably shows
07:55:46 23 that to be true. You can
07:55:47 24 absolutely satisfy, not only
07:55:51 25 satisfy the traditional

07:55:53 1 criteria, achieve excellence
07:55:57 2 under the traditional criteria
07:55:57 3 and also have partisan fairness
07:55:58 4 and also have a system where
07:56:00 5 you are honoring majority rule,
07:56:06 6 honoring close votes, close
07:56:06 7 seats, and therefore, having a
07:56:06 8 government that is properly
07:56:12 9 responsive and accountable to
07:56:13 10 the people of the Commonwealth.
07:56:14 11 And so what does that
07:56:15 12 mean at the end of the day?
07:56:16 13 Well, it means clearly you can
07:56:19 14 in Pennsylvania, unlike say in
07:56:21 15 Massachusetts, the example that
07:56:23 16 Dr. Duchin demonstrated, you
07:56:25 17 can have a map that meets the
07:56:27 18 traditional partisan criteria
07:56:27 19 and also achieves fairness.
07:56:27 20 And I would respectfully submit
07:56:27 21 to the Court that if you can
07:56:38 22 have such a map, then we must
07:56:38 23 have such a map, because I
07:56:40 24 think that is what the Free and
07:56:42 25 Equal Elections Clause, as

07:56:43 1 described by our Supreme Court,
07:56:44 2 means.

07:56:44 3 The Supreme Court says
07:56:46 4 that clause means that we have
07:56:47 5 to provide voters the
07:56:49 6 opportunity to the greatest
07:56:51 7 degree possible to participate
07:56:52 8 equally in all aspects of the
07:56:56 9 electoral process. And
07:56:58 10 redistricting is such an aspect
07:57:04 11 of the electoral process. And
07:57:05 12 so if we can't have a map that
07:57:08 13 meets the the traditional
07:57:08 14 criteria and excels under the
07:57:09 15 traditional criteria, and also
07:57:09 16 achieves partisan fairness,
07:57:13 17 then respectfully I suggest
07:57:14 18 that's the map the Court should
07:57:16 19 choose.

07:57:16 20 Now, is there only one
07:57:18 21 map that achieves that
07:57:20 22 standard? Not necessarily.
07:57:21 23 And I think Dr. Duchin said
07:57:23 24 very candidly that there is
07:57:25 25 more than one map in this case

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07:57:26 1 that is reasonable. But she
07:57:28 2 also explained that when you
07:57:29 3 take the plans that excel on
07:57:32 4 the traditional criteria and
07:57:35 5 you also take the universe of
07:57:39 6 plans that achieve real
07:57:41 7 partisan fairness, there's one
07:57:42 8 plan that falls into both
07:57:44 9 circles. And that is the
07:57:46 10 Governor's plan. And that's
07:57:47 11 why we think this Court should
07:57:50 12 elect, should adopt that plan
07:57:52 13 in this case. Elect is not the
07:57:55 14 right word. Thank you.

07:57:57 15 I would just like to say
07:57:58 16 one more word. I won't belabor
07:58:00 17 this. We heard from the
07:58:02 18 legislative --- the House
07:58:05 19 Legislative and Senate
07:58:05 20 Legislative Intervenors that
07:58:08 21 really the Court to ignore all
07:58:10 22 of this analysis. All the
07:58:10 23 Court needs to look at is the
07:58:11 24 fact that the map at issue is
07:58:14 25 passed by the General Assembly.

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07:58:15 1 We've explained the
07:58:15 2 non-responsive --- we've heard
07:58:15 3 I think very articulate
07:58:17 4 explanation from some of the
07:58:18 5 earlier counsel. That's simply
07:58:20 6 not the law. I would refer the
07:58:22 7 Court to the Decision of the
07:58:25 8 U.S. Supreme Court in Smiley v.
07:58:25 9 Holm, 285 US 355. That's a
07:58:30 10 1932 case.

07:58:30 11 JUDGE MCCULLOUGH:
07:58:30 12 Is it in your brief?

07:58:32 13 ATTORNEY WIYGUL:
07:58:32 14 It is in our brief, Your
07:58:34 15 Honor.

07:58:34 16 JUDGE MCCULLOUGH:
07:58:34 17 Okay.

07:58:35 18 ATTORNEY WIYGUL:
07:58:35 19 And it was recently
07:58:35 20 reaffirmed in the Arizona
07:58:36 21 redistricting case that earlier
07:58:39 22 counsel cited. And they sent
07:58:41 23 --- case from the district, the
07:58:43 24 House and Senate Republican
07:58:44 25 Intervenors. And if you want

07:58:45 1 to use the term outlier, Your
07:58:48 2 Honor, that case is an outlier.
07:58:48 3 We've cited case after case
07:58:50 4 after case in federal and in
07:58:51 5 probatively in State Supreme
07:58:53 6 Court that rejects the
07:58:55 7 principal that just because a
07:58:56 8 House map is passed by the
07:58:59 9 General Assembly it's entitled
07:59:01 10 to any sort of deference. It
07:59:02 11 has to be evaluated under the
07:59:05 12 same playing field under the
07:59:06 13 same standard as all the other
07:59:10 14 maps before the Court. Thank
07:59:10 15 you.

07:59:10 16 JUDGE MCCULLOUGH:

07:59:11 17 Are you going to speak
07:59:12 18 now for Secretary Chapman?

07:59:15 19 ATTORNEY WIYGUL:

07:59:15 20 Yes, I will, Your Honor.
07:59:16 21 As to the map, I mean, I think
07:59:18 22 we can largely rely on the
07:59:20 23 Affidavit that is at least
07:59:21 24 partially in evidence and
07:59:23 25 otherwise in the record. As we

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07:59:25 1 explain in the affidavit, the
07:59:28 2 calendar situation at the
07:59:30 3 moment is --- rather
07:59:30 4 complicated may be an
07:59:32 5 understatement because we have
07:59:34 6 another process, the
07:59:35 7 legislative redistricting
07:59:38 8 process, which is at a
07:59:40 9 different phase and a slower
07:59:42 10 pace and more delayed. And we
07:59:45 11 feel very strongly that it is
07:59:47 12 not in the interest certainly
07:59:48 13 of election administration, on
07:59:53 14 the interest of the people of
07:59:53 15 Pennsylvania to have two
07:59:55 16 separate primary elections.

07:59:57 17 Now, having said that, I
07:59:58 18 understand that that
07:59:58 19 legislative redistricting
07:59:59 20 process is not before Your
08:00:05 21 Honor.

08:00:05 22 JUDGE MCCULLOUGH:

08:00:05 23 It is litigation in this
08:00:05 24 Court.

08:00:05 25 ATTORNEY WIYGUL:

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08:00:05 1 Correct. Correct. I
08:00:06 2 appreciate that. And I think
08:00:07 3 ultimately --- my sense is this
08:00:09 4 ultimately will have to be
08:00:11 5 resolved by the Supreme Court.

08:00:12 6 JUDGE MCCULLOUGH:

08:00:12 7 My question is if there
08:00:15 8 were to be a change in the
08:00:17 9 front-end of the schedule, what
08:00:19 10 would the Secretary propose?

08:00:22 11 ATTORNEY WIYGUL:

08:00:22 12 Well, I think, Your
08:00:22 13 Honor, the Secretary I think
08:00:24 14 will not propose a change, but
08:00:25 15 in terms of what would be
08:00:30 16 realistic ---.

08:00:30 17 JUDGE MCCULLOUGH:

08:00:31 18 Three.

08:00:33 19 ATTORNEY WIYGUL:

08:00:33 20 I think what was in the
08:00:33 21 Affidavit, Your Honor. Again,
08:00:33 22 we're not talking about
08:00:33 23 advocating for something but
08:00:35 24 what is feasible, that it would
08:00:40 25 be preferable to have three

08:00:40 1 weeks between the the time of
08:00:43 2 the final map, and really by
08:00:44 3 final map we mean including the
08:00:44 4 resolution and the appeal is
08:00:45 5 adopted and the first date in
08:00:50 6 the primary calendar. But the
08:00:52 7 Affidavit goes on to explain
08:00:54 8 that, you know, if we had to we
08:00:55 9 think we could probably do that
08:00:56 10 in two weeks if we could
08:00:57 11 transfer resources. And there
08:01:01 12 are other ways in which we
08:01:04 13 could condense the existing
08:01:07 14 calendar as well. And I won't
08:01:07 15 --- I won't try to reproduce
08:01:07 16 what was in the Affidavit for
08:01:08 17 fear of getting it wrong, but
08:01:08 18 those details are in there.

08:01:11 19 JUDGE MCCULLOUGH:

08:01:11 20 Yes, it's --- it's in
08:01:11 21 the record.

08:01:12 22 ATTORNEY WIYGUL:

08:01:12 23 Thank you, Your Honor.

08:01:12 24 JUDGE MCCULLOUGH:

08:01:13 25 Is that it, Mr. Wiygul?

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ATTORNEY WIYGUL:

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Yes. But I would just

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say but at the end of the day

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4

we do feel and the Governor

08:01:20

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also feels very strongly we

08:01:21

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should not divide the primary

08:01:23

7

and we should end up with a

08:01:26

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primary date ultimately that

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9

will accommodate both

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redistricting processes that

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are currently still proceeding.

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JUDGE MCCULLOUGH:

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Thank you, Mr. Wiygul.

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ATTORNEY WIYGUL:

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Thank you.

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JUDGE MCCULLOUGH:

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And now we will hear

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from counsel for Petitioner

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Gressman. I'm not sure who's

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arguing.

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ATTORNEY RING-AMUNSON:

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Thank you, Your Honor.

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Jessie Amunson for the Math and

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Science Petitioners. I want to

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begin by just thanking the

08:02:00 1 Court for its incredible
08:02:02 2 patience and diligence over the
08:02:04 3 past couple of days and also
08:02:06 4 thank the Court's staff for
08:02:07 5 making sure that all of this
08:02:09 6 ran so smoothly.

08:02:10 7 The Court has certainly
08:02:12 8 worked the parties hard this
08:02:14 9 week, but we know that now hard
08:02:15 10 work is now in front of the
08:02:16 11 Court. Because of the
08:02:17 12 breakdown of the political
08:02:18 13 process, the Court now has the
08:02:20 14 unwelcomed obligation, as the
08:02:23 15 Supreme Court has called it, of
08:02:25 16 choosing among the parties'
08:02:26 17 plans.

08:02:27 18 There has been a lot of
08:02:30 19 testimony about a lot of
08:02:32 20 numbers over the past couple of
08:02:33 21 days. And there's one number
08:02:36 22 that really matters and that's
08:02:39 23 one. One person, one vote.
08:02:43 24 That's the guarantee of the
08:02:44 25 United States Constitution and

08:02:48 1 the Pennsylvania Constitution.

08:02:49 2 Indeed, the Pennsylvania
08:02:51 3 Constitution provides
08:02:51 4 protections for that right over
08:02:53 5 and above those provided in the
08:02:55 6 federal Constitution. The Free
08:02:57 7 and Equal Elections Clause, as
08:03:00 8 interpreted by the Supreme
08:03:02 9 Court in the League of Women
08:03:05 10 Voters case says all voters
08:03:06 11 have an equal opportunity to
08:03:07 12 translate their votes into
08:03:09 13 representation.

08:03:11 14 And I think it's worth
08:03:13 15 remembering what happened after
08:03:16 16 the Supreme Court found a
08:03:18 17 violation of that right in the
08:03:21 18 League of Women Voters case.
08:03:23 19 The Court gave the General
08:03:25 20 Assembly an opportunity to come
08:03:26 21 up with a new map that the
08:03:29 22 Governor could sign. That
08:03:31 23 didn't happen. The General
08:03:34 24 Assembly proposed a map, the
08:03:37 25 Governor rejected the map.

08:03:39 1 Then as now both the General
08:03:41 2 Assembly and the Governor then
08:03:43 3 went to court and proposed
08:03:45 4 their remedial plans to the
08:03:48 5 Court.

08:03:48 6 The Court didn't choose
08:03:49 7 the legislature's plan and
08:03:53 8 thereby effectively override
08:03:55 9 the Governor's power to veto
08:03:55 10 the plan. The Court didn't
08:03:55 11 choose the Governor's plan and
08:03:55 12 thereby effectively override
08:03:55 13 the legislature's traditional
08:04:07 14 primacy in redistricting. The
08:04:08 15 Court looked to a scientist to
08:04:11 16 help it. The Court brought on
08:04:12 17 a scientist to help the Court
08:04:14 18 draw up a plan that would
08:04:16 19 scrupulously adhere to the
08:04:18 20 neutral criteria and give all
08:04:19 21 voters an equal opportunity to
08:04:21 22 translate their votes into
08:04:25 23 representation.

08:04:26 24 We, the Gressman Math
08:04:27 25 and Science Petitioners, are

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08:04:29 1 likewise here to provide the
08:04:30 2 Court with a map that
08:04:32 3 scrupulously adheres to the
08:04:34 4 neutral criteria and is fair to
08:04:36 5 all voters.

08:04:38 6 The Court's heard a lot
08:04:39 7 of testimony over the past
08:04:40 8 couple of days about
08:04:42 9 trade-offs. You've heard, for
08:04:45 10 example, about how if you keep
08:04:47 11 Pittsburgh whole you will have
08:04:48 12 to take a hit on your
08:04:49 13 compactness scores. And
08:04:51 14 certainly there are a lot of
08:04:53 15 trade-offs in the redistricting
08:04:54 16 process. But I want to be
08:04:56 17 clear that there is one
08:04:57 18 trade-off that does not have to
08:04:59 19 be made. You do not have to
08:05:01 20 trade off compliance with the
08:05:03 21 traditional districting
08:05:04 22 criteria and partisan fairness.
08:05:07 23 You can achieve both. And the
08:05:10 24 best evidence of that is the
08:05:12 25 math that the Gressman Math and

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08:05:19 1 Science Petitioners have
08:05:20 2 submitted to the Court.
08:05:21 3 Just to go through the
08:05:24 4 League of Women Voters criteria
08:05:24 5 that the Supreme Court
08:05:25 6 instructed, the map has perfect
08:05:29 7 population equality. You can't
08:05:31 8 do better. Every district is
08:05:33 9 contiguous. As to political
08:05:36 10 subdivisions, there are six
08:05:37 11 different categories of them
08:05:38 12 that are in the Constitution
08:05:40 13 and the Constitution says not
08:05:44 14 to divide unless absolutely
08:05:46 15 necessary for population
08:05:47 16 reasons. Counties, we're tied
08:05:51 17 with the Republican Legislative
08:05:54 18 map, HB-2146. Cities, we do
08:05:58 19 the best and it's
08:06:00 20 mathematically impossible to do
08:06:01 21 better. We split only one city
08:06:03 22 in the entire Commonwealth, the
08:06:06 23 City of Philadelphia. And we
08:06:07 24 split it three ways because it
08:06:08 25 has to be split three ways due

08:06:14 1 to its population. We keep
08:06:16 2 Pittsburgh intact.
08:06:17 3 The next category is
08:06:18 4 incorporated towns. There is
08:06:20 5 only one of these in the entire
08:06:21 6 Commonwealth and we keep it
08:06:23 7 whole, as do all the other
08:06:24 8 parties. Townships, there are
08:06:26 9 1,546 of these in the
08:06:31 10 Commonwealth. We split 15.
08:06:33 11 Boroughs, again, we are the
08:06:35 12 best. We break three and only
08:06:37 13 where there are already
08:06:39 14 following county lines. Wards,
08:06:43 15 most of the other parties have
08:06:44 16 just completely ignored wards,
08:06:47 17 line edited it out of the
08:06:49 18 Constitution. But wards matter
08:06:51 19 to the people of Philadelphia
08:06:53 20 in particular. We split 15 of
08:06:56 21 them compared to 21 to 25 in
08:07:01 22 most of the other plans. And
08:07:03 23 when you add up these six
08:07:04 24 enumerated political
08:07:07 25 subdivisions in the

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08:07:11 1 Constitution, we're the very
08:07:11 2 best. We split the very fewest
08:07:20 3 among all of the parties.
08:07:22 4 The category
08:07:22 5 compactness, we're the top five
08:07:22 6 in every single measure across
08:07:23 7 the board. And that brings me
08:07:24 8 to partisan fairness. Here
08:07:28 9 it's undisputed that we are at
08:07:30 10 the top or tied for the top in
08:07:36 11 virtually every measure that
08:07:39 12 all the experts have testified
08:07:40 13 about today. The best
08:07:42 14 mean-median score in the most
08:07:46 15 recent elections, the best
08:07:46 16 anti-majoritarian outcome
08:07:50 17 score. In the top three in the
08:07:52 18 efficiency gap score. And you
08:07:53 19 don't have to just trust all of
08:07:56 20 the experts that were here.
08:07:58 21 Whatever Court --- whatever
08:07:59 22 plan the Court adopts, as you
08:08:03 23 heard today in the testimony of
08:08:04 24 Dr. Caughey, the public can run
08:08:04 25 it through Plan Score. And

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08:08:04 1 when they do that, if they run
08:08:04 2 all of these plans that were
08:08:04 3 submitted to the Court through
08:08:16 4 that, guess what plan is going
08:08:17 5 to perform the best? Ours, the
08:08:19 6 Gressman Math an Science plan.
08:08:21 7 It will perform the best on all
08:08:23 8 of the metrics of partisan
08:08:24 9 fairness, metrics that the
08:08:26 10 Supreme Court considered in the
08:08:28 11 League of Women Voters case.
08:08:32 12 And we do all of this while
08:08:34 13 being the only map that does
08:08:37 14 not pair any of the City
08:08:43 15 members of Congress against one
08:08:44 16 another for re-election. No
08:08:47 17 incumbent parings on our map.
08:08:49 18 We also do all this while being
08:08:50 19 the only plan that creates
08:08:52 20 three majority/minority
08:08:54 21 districts, reflecting
08:08:55 22 Pennsylvania's growingly
08:08:59 23 diverse population.
08:09:01 24 And I want to be clear
08:09:02 25 here. We have been completely

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08:09:03 1 transparent with the Court. We
08:09:05 2 didn't cherry pick. We didn't
08:09:07 3 present you with just county
08:09:09 4 statistics or just municipality
08:09:13 5 statistics. You heard from Dr.
08:09:13 6 DeFord yesterday and you have
08:09:14 7 his report. It goes through
08:09:15 8 every single one of the
08:09:16 9 criteria that were considered
08:09:17 10 in the League of Women Voters
08:09:20 11 case. It applies those
08:09:21 12 criteria to every single plan
08:09:23 13 in the exact same way.

08:09:25 14 But to end where I
08:09:26 15 started, the number that really
08:09:28 16 matters here is one. One
08:09:30 17 person, one vote. The Court
08:09:33 18 now has the responsibility of
08:09:34 19 choosing the plan that best
08:09:35 20 fulfills that guarantee. We
08:09:38 21 hope that our rigorous,
08:09:40 22 non-partisan and scientific
08:09:42 23 approach has been of service to
08:09:46 24 the Court and we urge the Court
08:09:47 25 to choose the plan that

objectively performs the best across the board, the Gressman Math and Science plan.

To briefly address the election calendar issue, Your Honor, we do not believe it is necessary at this point to move the primary. The Court has promised to rule expeditiously and we trust that the Court will do so.

As to the compression of the preprimary dates, we would defer to the election administrators who are the professionals in that space, but we do recognize that there can be some compression of the preprimary schedule. Thank you, Your Honor.

JUDGE MCCULLOUGH:

Thank you very much, Counsel.

Okay.

Mr. Gordon for

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Petitioners.

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ATTORNEY GORDON:

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Thank you, Your Honor.

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And thanks you for the Court

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staff for putting this on short

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notice and doing a great job

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with setting up the courtroom

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keeping us all safe. On behalf

08:11:03

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of my clients, expressed

08:11:07

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sincere gratitude for that.

08:11:09

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You just heard from

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seven or eight different

08:11:10

13

parties advocating that they

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14

have the best map. The single

08:11:14

15

congressional redistricting map

08:11:16

16

that should be implemented for

08:11:16

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the next decade. And the

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justifications are varied and

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they are creative, and they

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relied variously on subjective

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21

determinations about

08:11:23

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excellence, arguments that

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they're entitled to deference,

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various variables that have

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multiple metrics, disputes

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08:11:33 1 about the relative value of the
08:11:34 2 metrics and splitting hairs
08:11:35 3 about the importance of subtle
08:11:37 4 differences among the plans of
08:11:40 5 these metrics. Against this
08:11:43 6 muddled backdrop, the Carter
08:11:46 7 plan stands out as the superior
08:11:48 8 because it is undisputedly
08:11:50 9 superior on an objective
08:11:52 10 criterion of least change.

08:11:54 11 You don't have to take
08:11:55 12 my word for that or even Dr.
08:12:00 13 Rodden's word for that.
08:12:03 14 Multiple experts agree that the
08:12:05 15 Carter plan hues closest to the
08:12:07 16 2018 plan that was adopted by
08:12:10 17 the Pennsylvania Supreme Court,
08:12:11 18 and as such thus embodies the
08:12:11 19 ideals backed into that plan's
08:12:14 20 district by least disrupting
08:12:15 21 those districts.

08:12:19 22 You know, about the
08:12:20 23 traditional redistricting
08:12:21 24 criteria. Many of them are not
08:12:24 25 helpful in differentiating

08:12:26 1 among the plans here.

08:12:29 2 Contiguity and population

08:12:31 3 equity don't help to

08:12:31 4 distinguish among the plans.

08:12:31 5 Compactness and

08:12:33 6 political subdivision splits,

08:12:34 7 the Carter plan does very well

08:12:36 8 on those, but here's where you

08:12:38 9 get into the different measures

08:12:39 10 and the different rights per

08:12:41 11 measures and the subtle

08:12:42 12 differences. And as Dr.

08:12:45 13 Duchin, an opposing expert

08:12:46 14 testified, there's no bright

08:12:47 15 line threshold for compliance

08:12:49 16 with compactness or political

08:12:51 17 splits, political subdivision

08:12:53 18 splits. In fact, it appears

08:12:55 19 that the experts agree that the

08:12:58 20 plans are reasonably compact.

08:13:02 21 The Carter plan does

08:13:03 22 better on some measures and

08:13:04 23 relatively not as well on

08:13:06 24 others, in part that is why the

08:13:10 25 result of decision to keep

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08:13:12 1 Pittsburgh whole, as you've
08:13:14 2 heard, if you do that, you
08:13:15 3 lower a plan's Polsby-Popper
08:13:18 4 compactness score, which
08:13:19 5 illustrates the trade-offs and
08:13:21 6 the difficulty in choosing
08:13:24 7 among the plans based on the
08:13:25 8 choices they made on those
08:13:25 9 trade-offs.

08:13:26 10 The Carter plan also
08:13:28 11 performs very well on political
08:13:29 12 subdivision splits, and here I
08:13:31 13 would note that the plans are
08:13:33 14 close and most, if not all
08:13:34 15 plans, did better than the 2018
08:13:36 16 plan. And the differences,
08:13:39 17 especially when you get into
08:13:42 18 the numbers like the municipal
08:13:43 19 splits are quite small relative
08:13:44 20 to the number of municipalities
08:13:45 21 in Pennsylvania.

08:13:45 22 The Carter plan is tied
08:13:48 23 for the lowest number of county
08:13:50 24 splits, depending on you count
08:13:51 25 this six-person segment of

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08:13:53 1 Chester County. And Dr.
08:13:55 2 DeFord, another opposing expert
08:13:56 3 testified that counties were
08:13:58 4 the most important subdivision
08:13:59 5 to avoid splitting.

08:14:01 6 The Carter plan also
08:14:02 7 analyzed an additional metric,
08:14:05 8 the number of VTD splits. And
08:14:09 9 Doctor Rodden testified why
08:14:14 10 this was so important and why
08:14:17 11 it was important that the
08:14:17 12 Carter plan had the fewest
08:14:20 13 number of VTD splits. But
08:14:21 14 again, you don't have to take
08:14:22 15 his word for it. The Mellow
08:14:23 16 report said that a serious
08:14:24 17 election administration problem
08:14:24 18 arises from requiring voters in
08:14:26 19 a single precinct to look to
08:14:28 20 two different sets of
08:14:29 21 Congressional candidates,
08:14:31 22 emphasizing this not a minor
08:14:33 23 problem.

08:14:36 24 So we have to turn, I
08:14:39 25 think to other considerations

08:14:40 1 to really differentiate among
08:14:41 2 the plans. And the parties
08:14:46 3 provide some various reasons,
08:14:47 4 but I submit that none of them
08:14:48 5 are particularly helpful to
08:14:49 6 this Court. Because for
08:14:51 7 example, the Republican
08:14:51 8 legislatures ---- legislative
08:14:53 9 intervenors that they should
08:14:54 10 adopt their plan, because it
08:14:55 11 deserves deference. But the
08:14:56 12 map was vetoed.

08:14:57 13 And giving a deference
08:14:59 14 would give the General Assembly
08:15:03 15 perverse incentives to
08:15:04 16 circumvent a legislative
08:15:05 17 process in the future and
08:15:06 18 circumvent the possibility of
08:15:07 19 compromising to win executive
08:15:10 20 branch approval. And it would
08:15:13 21 elevate one branch of
08:15:15 22 government over the other. And
08:15:16 23 it would also contradict the
08:15:18 24 guidance from the Mellow Court
08:15:19 25 that says all maps should be

1113

08:15:21 1 considered on the same footing.

08:15:25 2 The Gressman Petitioners

08:15:27 3 would like you to adopt their

08:15:29 4 plan in part who they are and

08:15:31 5 how their map was drawn. But

08:15:32 6 I'd like to point out to the

08:15:36 7 Court that the Carter plan is

08:15:37 8 the only one who had an expert

08:15:39 9 here to testify about how the

08:15:41 10 plan was drawn and the fact

08:15:47 11 that partisan data was not

08:15:47 12 considered while drawing that

08:15:49 13 plan. And that is reflected in

08:15:49 14 the Carter plan's consistently

08:15:50 15 top performance in the various

08:15:52 16 evaluations of partisan

08:15:53 17 fairness.

08:15:56 18 On the county split

08:15:57 19 issues, I would just like to

08:15:59 20 point out to the Court that no

08:16:01 21 party proposed a map with the

08:16:02 22 minimum of three county splits.

08:16:05 23 All exceeded the minimum

08:16:07 24 possible. And the Supreme

08:16:09 25 Court adopted a plan in 2018

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08:16:11 1 above the minimum possible
08:16:12 2 number of splits. The Governor
08:16:14 3 would like you to adopt this
08:16:16 4 plan, in part, because Dr.
08:16:20 5 Duchin says it's an excellent
08:16:22 6 plan, but she conceded that's
08:16:24 7 an objective determination.
08:16:24 8 And that, again, illustrates
08:16:27 9 the problems and subjective
08:16:27 10 judgments based on different
08:16:30 11 measures of subdivision splits
08:16:30 12 in compactness, et cetera.

08:16:32 13 We looked to the other
08:16:34 14 criteria then, the historical
08:16:36 15 criteria, the communities of
08:16:39 16 interest, that's a hard one to
08:16:41 17 gauge because different
08:16:42 18 experts, different parties talk
08:16:43 19 about different factors. But
08:16:44 20 the Carter plan does as well or
08:16:46 21 better than others. It keeps
08:16:48 22 Pittsburgh whole, it keeps
08:16:51 23 Harrisburg whole. It keeps
08:16:53 24 Bucks County together in one
08:16:53 25 district, which Dr. Naughton

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08:16:55 1 testified was important.

08:16:59 2 It's the other two

08:17:01 3 factors where we start to see

08:17:03 4 some differentiation among the

08:17:04 5 Plan. Partisan fairness,

08:17:05 6 you've heard a lot about that,

08:17:06 7 and that is critical because

08:17:07 8 underlying the League of Women

08:17:10 9 Voters criteria and factors is

08:17:12 10 the underlying principal as the

08:17:15 11 Court said it's axiomatic that

08:17:18 12 a diluted vote is not an equal

08:17:20 13 vote, and that's what this case

08:17:22 14 is really about. And it's also

08:17:24 15 reflected in Mellow.

08:17:25 16 As I mentioned the

08:17:26 17 Carter plan performs

08:17:31 18 exceptionally well in this

08:17:32 19 measure, but not all did. As

08:17:32 20 multiple experts, including the

08:17:33 21 House Republican's own expert,

08:17:35 22 Dr. Barber, admitted on Cross

08:17:37 23 Examination under his analysis

08:17:39 24 of mean-median, HB-2146 and the

08:17:43 25 two Reschenthaler plans are the

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08:17:44 1 most bias plans there are among
08:17:46 2 the group.

08:17:47 3 And we've heard some
08:17:48 4 justifications about relying on
08:17:50 5 political geography, but I
08:17:51 6 agree with Dr. Duchin. There's
08:17:54 7 no reason to let the chips fall
08:17:56 8 where they may when we can do
08:17:58 9 better. And preventing vote
08:18:01 10 dilution compels that we aim
08:18:04 11 higher.

08:18:04 12 Multiple experts agreed
08:18:06 13 that the Carter plan does very
08:18:07 14 well on the partisan fairness
08:18:09 15 metrics.

08:18:09 16 And that leaves the
08:18:10 17 final objective criteria where
08:18:13 18 it's undisputed that the Carter
08:18:16 19 plan does the best.

08:18:17 20 Preservation of the core of
08:18:18 21 districts, preservation of the
08:18:20 22 2018 plan. And that clenches
08:18:23 23 the analysis for the Carter
08:18:24 24 plan.

08:18:25 25 Least change is an

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08:18:26 1 objective criteria that can be
08:18:28 2 measured. And it has been
08:18:29 3 measured here by Dr. Rodden and
08:18:34 4 Dr. Duchin who each got the
08:18:35 5 same numbers. And on that
08:18:38 6 criteria, as Dr. Duchin said
08:18:42 7 the Carter plan was superlative
08:18:43 8 and it lapped the field.

08:18:46 9 The Court has heard,
08:18:47 10 again, a lot of arguments and
08:18:49 11 testimony about this.
08:18:50 12 Ultimately as the Court stated
08:18:51 13 in Mellow, this Court must
08:18:53 14 consider each plan on the same
08:18:54 15 footing. And we submit that
08:18:56 16 when this Court does that in
08:18:58 17 applying the single objective
08:19:00 18 criterion on which there's no
08:19:02 19 dispute about which plan is
08:19:03 20 superior, the Carter plan
08:19:05 21 should be adopted.

08:19:06 22 Thank you, Your Honor.

08:19:10 23 JUDGE MCCULLOUGH:

08:19:11 24 Do you have a comment on
08:19:12 25 the election schedule?

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08:19:15

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ATTORNEY GORDON:

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Your Honor, we certainly

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3

don't dispute that if necessary

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4

the Court has the authority to

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5

change the deadlines, including

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6

the primary deadline. We don't

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think it will be necessary,

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8

given the time here. And we

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9

hope that it's not.

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JUDGE MCCULLOUGH:

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Thank you.

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ATTORNEY GORDON:

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13

Thank you.

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JUDGE MCCULLOUGH:

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All right.

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The Court now would just

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note a few things for the

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record. That all maps, expert

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reports, including files

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uploaded to the Court in accord

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with the Court's Order in a

08:19:44

22

timely fashion are already part

08:19:46

23

of the record and are so

08:19:48

24

admitted.

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Doctor Burnell and

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08:19:55 1 Doctor Meme's expert reports
08:19:55 2 will not be excluded on the
08:19:58 3 basis of hearsay, as we have
08:20:00 4 expert reports also that have
08:20:03 5 been submitted by the Amici in
08:20:09 6 the same fashion.

08:20:10 7 Regarding also,
08:20:11 8 specifically, the Lamb report
08:20:12 9 and other attachments of the
08:20:14 10 parties filings that were
08:20:15 11 timely filed with the Court,
08:20:18 12 they are already part of the
08:20:20 13 record and so admitted.

08:20:23 14 Counsel, we've already
08:20:24 15 discussed that you may submit
08:20:26 16 post-trial submissions, whether
08:20:28 17 that's a brief, a memorandum of
08:20:31 18 law, I'm leaving it up to you
08:20:33 19 how you want to craft it for
08:20:37 20 your client, and those are due
08:20:39 21 tomorrow, Saturday by
08:20:39 22 two o'clock.

08:20:44 23 And I want to thank the
08:20:45 24 parties and Amici for their
08:20:45 25 sincere interest in the

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08:20:53 1 constitutionalit y of
08:20:53 2 Pennsylvania's congressional
08:20:55 3 districting process. I have
08:20:57 4 many thanks to the attorneys,
08:20:59 5 all of you that have been
08:21:00 6 involved, even those not in the
08:21:02 7 room, for your cooperation and
08:21:04 8 your professional decorum in
08:21:06 9 the courtroom. You have all
08:21:08 10 represented your clients'
08:21:09 11 interests very commendably.

08:21:12 12 And I thank the IT
08:21:14 13 staff, our Court Criers, our
08:21:17 14 ticket administrator,
08:21:19 15 Prothonotary's office and the
08:21:20 16 office of legal counsel and my
08:21:21 17 own staff for ensuring that we
08:21:24 18 could conduct this trial in
08:21:27 19 such an expedited schedule.

08:21:27 20 And there is, as many of you
08:21:27 21 have noted there is a lot of
08:21:27 22 technical and legal information
08:21:27 23 which the Court now needs to
08:21:41 24 review and assess and the court
08:21:41 25 will do so as stated before in

1121

08:21:44 1 as expedited manner as
08:21:46 2 possible.
08:21:47 3 The Court --- I
08:21:48 4 appreciate that this is a critical
08:21:50 5 matter affecting the constitutional
08:21:55 6 rights of the people of Pennsylvania.
08:21:57 7 So I thank you all. I think we are
08:21:59 8 finished. So thank you very much.

08:22:20 9 COURT CRIER HOLLAND:

08:22:20 10 The Commonwealth Court
08:22:22 11 is now adjourned.

08:22:22 12 * * * * *

08:22:22 13 HEARING CONCLUDED

08:10:23 14 * * * * *

08:10:23 15 —

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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Judge McCullough, was reported by me on 1/28/2022 and that I, Nicole Montagano, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 28th day of January, 2022



Nicole S. Montagano,
Court Reporter